U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27469009

Date: AUG. 15, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, a tour guide/entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar,* 26 I&N Dec. at 889.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner initially stated on Form I-140 that his proposed employment is "President and Lead Tour Guide" and his nontechnical job description is to "promote, direct, and coordinate excursions and tours." In his personal statement, the Petitioner described his endeavor as follows:

> I founded the company [redacted] with the purpose of providing adventure and sport travel packages with focus on Ecotourism, Adventures, Spiritual, and Cultural Travel Experiences.

[2] The record includes the Petitioner's diploma and academic transcripts from Universidade [redacted] in Brazil showing that he earned a bachelor in tourism in December 2003, as well as an academic evaluation stating that this foreign degree is equivalent of a U.S. bachelor's degree in hospitality management. In addition, employment letters verify his progressive work experience in tourism and travel industry for more than five years after completing his bachelor's degree.

The Director concluded that the Petitioner did not meet the first prong of the *Dhanasar* framework, as the evidence established that the Petitioner's proposed endeavor has substantial merit, but not national importance. The Director, however, did not provide an analysis of the second prong, whether the Petitioner is well-positioned to carry out his proposed endeavor. In addition, the Director concluded that the Petitioner did not meet *Dhanasar*'s third prong, as the Petitioner did not show, on balance, any national interest factors that would outweigh the benefits inherent in the labor certification process.

A. Substantial Merit and National Importance of the Proposed Endeavor

On appeal, the Petitioner contends that the Director erred by applying a "stricter standard of proof" when evaluating the national importance element of *Dhanasar*'s first prong and not analyzing the "totality of the evidence," including his personal statement, business plan, probative research, and expert opinion.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director thoroughly analyzed the Petitioner's documentation and weighed his evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted articles and reports addressing importance of the tourism field and its mpact on the U.S. economy. We recognize the value of the tourism industry and career; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

Similarly, the Petitioner's personal statement emphasizes the value of the tourism industry instead of focusing on the prospective impact of his specific endeavor. The Petitioner discusses at length about how tourism industry creates jobs, develops infrastructures of a country, facilitates cultural exchange, and generates revenue for the nation's economy. Then the Petitioner claims that his proposed endeavor, as it is in the field of tourism, will "reduce unemployment rates and contribute to the overall economy's growth," and "enhance the country's image and reputation worldwide, which can positively affect foreign relations, trade, and investment." However, the Petitioner does not point to any corroborating evidence that would directly link his specific endeavor to the overall economy's growth. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

In addition, the Petitioner asserts that the expert opinion from [redacted] an adjunct professor of business at the [redacted] University, provides the independent and objective evidence demonstrating

national importance of his endeavor. The bulk of the opinion letter discussed the importance of the tourism and travel industry as "one of the world's largest sectors, driving socio-economic development and job creation." The letter also pointed to the Petitioner's "in-depth knowledge in the Latin American market" and highlighted Brazil's economic relationship and trading partnership with the United States. [redacted] concluded that the Petitioner's "outstanding leadership and in-depth knowledge will successfully navigate the complex myriad of negotiating trade deals between U.S. companies and those in Latin America" and "help U.S. companies conduct business in the foreign market and will also help LATAM companies looking to do business in the U.S., including establishing a physical location."

However, the Petitioner has not mentioned that his endeavor would involve negotiating trade deals or assisting U.S. companies to conduct business in the foreign market or vice versa. The Petitioner has consistently stated that his proposed endeavor is to "incentivize and promote traveling and tourism in the U.S." and his company's mission is to provide travel and tourism services to clients, such as shuttle service, helicopter flying experience, sports adventures, urban tours, and custom travel packages. The Petitioner also stated that, as the president of his company, he would direct all activities of his business and negotiate business contracts, but nothing in the record indicates that he would provide assistance to establishing trading deals or business relationships for companies in the United States or Latin America. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

In addition, we noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Dhanasar*, 26 I&N Dec. at 890.

The Petitioner's business plan attempts to show his endeavor's potential positive economic effects by recounting the value and importance of the U.S. travel and tourism industry. For example, the plan stipulates that "[b]y 2040, international travel will have become a faster, easier, and more ecologically sustainable activity"; "approximately 20 percent of all new jobs created in the world are travel and tourism related"; "revenues from travel have increased approximately 100% in the last decade"; and "U.S. travel agencies produce over $100 billion in revenues each year." However, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id.* at 889.

Although the Petitioner's business plan lays out its overall mission and objectives, it does not provide sufficient details to show any significant potential to employ U.S. workers or other substantial positive economic effects rising to the level of national importance. The business plan states that the Petitioner's company will start with four full-time staff but does not provide any future staffing projections. The plan also states that "[t]he company does not expect any problems with expenses or cash flow within the next three years," but does not detail its future financial projections. On appeal, the Petitioner quotes from the U.S. Small Business Administration (SBA)'s official website: "there is no right or wrong way to write a business plan. What's important is that your plan meets your needs." However, while SBA's role is to assist the small businesses to grow and flourish, our role here is to evaluate the evidence and adjudicate petitions according to the *Dhanasar* framework.

The Petitioner claims that his endeavor "will boost job creation; tax revenue generation; and destination storytelling and will create a ripple effect that will positively impact the lives of millions of Americans." We acknowledge that any offer of goods or services has the potential to impact the economy; however, the record does not support the Petitioner's small business providing tourism services with four staff members would operate on such a large scale that would benefit the U.S. economy or the business industry rising to the level of national importance. In addition, the record does not demonstrate that the company will provide substantial impact to any economically depressed areas in Arizona or the western part of the United States. The Petitioner has not provided corroborating evidence, aside from claims in his business plan and his own statement, that his company's staffing levels and business activity stand to provide substantial economic benefits regionally or to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For these reasons, we conclude that the Petitioner's proposed work does not meet the national importance element of the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The Director did not expressly state nor provide an analysis of the evidence submitted to show that the Petitioner met the second prong of the *Dhanasar* framework.[3] As the Director did not provide the necessary analysis, we perform a de novo review to determine whether the Petitioner is well positioned to advance his proposed endeavor.

Here, the Petitioner's proposed endeavor focuses on his company and how his entrepreneurial activities will create jobs and positive economic impact to the United States. While we agree that the Petitioner's credentials and experience in tourism industry are sufficient to allow him to continue to be employed in that field in the United States, the record does not demonstrate that he is well-positioned to advance as an entrepreneur.

As noted above, in the second prong of the *Dhanasar* framework, we shift our focus from the proposed endeavor to the Petitioner. *Dhanasar*, 26 I&N Dec. at 890. The *Dhanasar* decision spelled out several factors which can be considered in determining whether a petitioner is well-positioned to advance their proposed endeavor, including several which are pertinent to entrepreneurial endeavors. These include a record of success in similar efforts, any progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals. *See also* 6 USCIS Policy Manual F.5(D)(4), https://www.uscis.gov/policymanual (describing several categories of evidence that an entrepreneur may submit in support of a request for a national interest waiver, including ownership and an active or central role in a U.S.-based entity, documents showing a future intent to invest by an outside investor, incubator or accelerator participation, intellectual property, and relevant growth metrics for the startup company). In this case, the record lacks evidence which supports any of these factors.

[3] The Director concluded that "[t]he provided evidence does not establish that the petitioner meets the first and third prongs of the national interest waiver."

The record demonstrates that the Petitioner has a degree in tourism and hospitality from a university in Brazil and he has worked in the tourism industry throughout his career. The resume shows that in 2017, the Petitioner attended [redacted] College to study international business but put his studies "on hold" after one year and he has no other education relating to his entrepreneurial endeavor. Although the evidence includes several experience letters from former employers, there is no evidence that he has previously attempted or succeeded in starting a new business. The letters only describe the Petitioner's knowledge and experience in travel and tourism industry.

In addition, the record lacks documentation of any progress towards achieving this endeavor, which might include the establishment of the business as a legal entity, registration of the business, securing any necessary funding, renting or purchasing physical space for the business, and the hiring of employees and contractors. The Petitioner's business plan does not include financial forecasts and projections, company milestones, or funding sources that would assist in evaluating this second prong. Instead, the Petitioner offered a copy of his tax returns for 2021 and Schedule C, Profit or Loss from Business, showing that the company's gross sales total $60,120 and the business expenses total $19,030. However, we are unable to see the progress of the company as the Petitioner provided tax returns only for the year 2021.[4] In addition, the submitted tax returns do not include his signature or any indication that they were filed with the Internal Revenue Service. Without the signed tax returns, along with evidence that they have been filed, this evidence is not verifiable and thus does not sufficiently support the Petitioner's assertions regarding his business.

Further, the record does not provide sufficient information regarding interest from potential investors or customers. The Petitioner includes some copies of its Instagram pages showing the company's presence online and an article featuring his company from [redacted] Arizona magazine. However, the Petitioner has not shown other corroborating evidence that these marketing strategies have resulted in obtaining sales, contracts, or clients, to demonstrate some record of success. The Petitioner claims that it "made partnerships with important companies to extend our ability to offer quality services to our customers" and "established relationship with providers of travel-related products and services" but the record does not show evidence of letters or contracts to confirm these partnerships.

While "we do not ... require petitioners to demonstrate that their endeavors are more likely than not to ultimately succeed," *Id.*, here the record includes more information about his achievements as a hard-working employee in the tourism and travel related industries than about the prospects of his proposed business. Accordingly, we conclude the Petitioner has not established that he meets the second prong of the *Dhanasar* framework.

C. Whether on Balance It Would be in the National Interest to Grant a Waiver

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims on appeal that he is eligible for a waiver due to the impracticality of labor certification as there is no provision in the Department of Labor regulations permitting a self-petitioning entrepreneur to file a labor certification. However, as the Petitioner has not demonstrated that he meets the first and second prongs of the *Dhanasar* framework, he is not

[4] The Petitioner's business plan states that the company was established in 2019.

eligible for a national interest waiver as a matter of discretion and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.