U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28962708

Date: DEC. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may excuse a job offer in this category - and a related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that waiver of these U.S.-worker protections are "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. While finding that the Petitioner's proposed endeavor has "substantial merit," the Director concluded that he did not demonstrate the overall merits of a national interest waiver. On appeal, the Petitioner contends that the Director overlooked evidence that: his venture has "national importance;" he is "well-positioned" to advance it; and, on balance, a waiver would benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has not sufficiently demonstrated the claimed national importance of his proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must demonstrate their qualifications for the requested EB-2 immigrant visa category, either as members of the professional holding "advanced degrees" or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term national interest. Thus, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, beneficiaries may merit waivers of the job-offer/labor certification requirements if their petitioners establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian national and citizen, has almost 30 years of experience as a business entrepreneur. He has established various types of businesses, including: restaurants; media companies; marketing enterprises; and e-commerce, educational, and technology firms.

Proposing to continue his entrepreneurial activities in the United States, the Petitioner states that he has already founded five U.S. businesses, which together purportedly employ 87 workers. His businesses include: a construction company; an educational enterprise; an elevator corporation; a marketing and business development company; and an audiovisual communications firm.

B. The Immigrant Visa Category

The Petitioner asserts his qualifications for the requested EB-2 immigrant visa category as an advanced degree professional and contends that the Director found him eligible on that basis. But the record shows that the Director neglected to consider his eligibility for the requested category. As we can decide this matter on another ground, we will not consider the Petitioner's qualifications for the category in the first instance. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant was not otherwise eligible for relief).

C. Substantial Merit

A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The record shows that the Petitioner's proposed U.S. venture could generate revenues, create jobs, and contribute to societal welfare. We therefore agree with the Director that the Petitioner's endeavor has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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." *Id.*

The Director found insufficient evidence that the Petitioner's proposed endeavor would rise to the level of national importance. On appeal, the Petitioner contends that the Director overlooked evidence that his businesses would generate substantial reviews, create jobs, and benefit vulnerable populations.

The Petitioner submitted business plans projecting that, within the first five years of their operations, his educational enterprise would generate $2,389,530 in revenues and his elevator company would achieve more than $1 million in net profits. He also states that all of his businesses together would generate more than 150 indirect jobs.

But, even assuming the accuracy of the Petitioner's projections, they do not demonstrate that his businesses would significantly affect the national economy. He also claims that his businesses would increase growth in economically depressed areas. But he does not identify the areas or explain how the businesses would benefit them.

The Petitioner also contends that his businesses would benefit vulnerable populations in the United States. He states that his elevator company has developed a compact elevator that people can install in their homes. The Petitioner argues that this product would help elderly and disabled people who have problems moving. He also states that his educational business focuses on "problem based learning," which he says develops skills related to "employability." The Petitioner therefore contends that the education company would help U.S. residents develop skills leading to high-paying jobs.

Like the evidence of the claimed economic benefits of the Petitioner's businesses, however, his proof of their potential social benefits is insufficient. The record does not establish that his businesses would grow to the size and scope needed to have social implications on a national scale. Also, the Petitioner has not sufficiently demonstrated that his businesses would introduce advancements in his field. As in *Dhanasar*, where we found that an otherwise meritorious proposal to teach science, technology, engineering, and mathematics classes to university students lacked national importance, the Petitioner has not established that his proposed endeavor would affect his field "more broadly." *Matter of Dhanasar*, 26 I&N Dec. at 893.

For the foregoing reasons, the Petitioner has not demonstrated that his proposed U.S. entrepreneurial activities have national importance. We will therefore affirm the petition's denial.

E. The Other Denial Grounds

Our determination regarding the national importance of the Petitioner's proposed endeavor resolves this appeal. Thus, similar to his eligibility for the requested immigrant visa category, we decline to consider and hereby reserve his appellate arguments regarding his positioning to advance his endeavor and a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not sufficiently demonstrated that his entrepreneurial activities in the United States would have national importance. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.