U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28819071

Date: DEC. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. Section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that while the Petitioner qualifies as an advanced degree professional and his endeavor has substantial merit, the record did not establish that his endeavor has national importance, that he is well-positioned to advance that endeavor, or that, on balance, it would benefit the United States to waive the job offer requirement. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the

noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The sole issue on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the job offer requirement is warranted.

The first prong of the *Dhanasar* test, substantial merit and national importance, focuses on the specific endeavor that the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. When determining whether a proposed endeavor would have national importance, we examine the specific impact of that proposed endeavor. *Id.* For example, an endeavor may qualify if it has national implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.*

Here, the Petitioner proposes to run a trucking and logistics services company in Florida whose services would eventually be available throughout the country.[1] The Director concluded that while this endeavor has substantial merit, it is not nationally important. In the denial, the Director noted that the evidence did not establish that the endeavor would have national or global implications on the transportation field, that it has significant potential to generate substantial positive economic effects, or that it would otherwise have an impact beyond its customer base and employees.

On appeal, the Petitioner contends that this finding is in error because *Dhanasar* only names national implications and economic effects as examples of how an endeavor can have national impact, and does not restrict the definition to those two possibilities. *Id.* at 889. The brief then explains at length why none of the examples of national importance used by the Director, such as employment of U.S. workers, are required to establish eligibility, and contends that the denial was therefore in error. This contention is without merit. The Petitioner has the evidentiary burden to provide relevant, probative, and credible evidence that his endeavor is more likely than not to be nationally important, and to establish where that importance lies. *Id.*; *Matter of Chawathe*, 25 I&N Dec. at 376 (describing the Petitioner's burden of proof under the "preponderance of the evidence" standard used in these proceedings); *see generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (stating that an endeavor's national impact may rise to the level of national importance if it has significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study). As correctly noted by the Director, the Petitioner has not met that burden here.

On appeal, as in the underlying case, the Petitioner relies heavily on the importance of the national trucking industry to the U.S. economy to establish the importance of his endeavor. However, these arguments relate to the merits of the endeavor, not its national importance, which is a separate consideration under *Dhanasar*. The relevant question in determining national importance is not the importance of the Petitioner's occupation or industry; instead, "[i]n determining whether the proposed

[1] The Petitioner's title is listed alternatively in the record as chief executive officer and director and administrator.

endeavor has national importance, we consider its potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. It is the Petitioner's burden to establish what impact his endeavor, in and of itself, will have.

The Petitioner's business plan states that by its fifth year of operations, his endeavor will employ 14 workers, including 10 truck drivers, and have a $734,284 payroll,[2] and the supporting evidence provides various calculations of his endeavor's estimated tax payments and indirect job creation. According to the appellate brief, this previously-provided information "demonstrated that [the Petitioner's] company will employ U.S. workers and create a significant impact, especially since USCIS has not established a quantity of positive economic impacts nor the number of employees necessary to meet the requirement." We disagree. Although *Dhanasar* did not state a numerical threshold for establishing national importance, when relying on an endeavor's potential to have a substantial economic effect, the Petitioner must establish that the impact and implications of his endeavor's economic activity rise to the level of national importance. Here, he has not established that the area where his company will operate is economically depressed or otherwise discussed his economic calculations within the context of the Florida or national economy, and so has not established that his endeavor will have the kinds of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 889-90.

We acknowledge the merits of the Petitioner's plan to classify his truck drivers as employees rather than contractors and to provide them with sufficient pay, rest periods, and benefits to accomplish their jobs safely. However, the Petitioner provides no specific information about how he would cause this practice to spread to the larger trucking industry. For example, the expert opinion letter from Professor F-J-Q- of [redacted] states that "[d]ue to his track record, I am sure [the Petitioner] will be asked to present at lectures, congresses and seminars," and that "[u]ltimately, he will distribute his knowledge to other professionals in the field, increasing their skills and increasing the workforce." However, Professor F-J-Q- does not provide any further information on this topic, and the Petitioner's business plan and supporting materials do not present any plan for such knowledge sharing or specific information about it, such as how many people the Petitioner will address, where he will do so, or what specific topics he will discuss.

USCIS may, in its discretion, use expert testimonial statements as advisory opinions. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we are ultimately responsible for making a determination regarding eligibility for the benefit sought. *Id.* Expert opinion letters, like all evidence submitted in support of a petition, are examined for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, and we are not required to accept or may give less weight to such letters if they are unsupported by the rest of the record. *See id.*; *Matter of Chawathe*, 25 I&N Dec. at 376. Here, much of the content of the provided expert opinion letters lacks relevance and probative value with respect to the national importance of the Petitioner's endeavor. General statements about knowledge sharing are insufficient to establish how the Petitioner will impact trucking industry employment practices beyond his own company on a level rising to national importance. *Matter of Chawathe*, 25 I&N Dec. at 376.

[2] We note that the Petitioner does not provide a basis or supporting evidence for the business plan's projections of expenses such as rent, utilities, and marketing.

In the appellate brief, the Petitioner objects to the Director's statement that the evidence did not establish "the potential prospective impact of the self-petitioner's specific proposed endeavor would have any implications beyond his own company, its customers, clients, [or] employees . . . to impact the field, industry, or economy more broadly . . . at a level commensurate with national importance." According to the brief, this held the endeavor to an incorrect standard by stating it must impact a broad geographic area in order to have national importance. *Id.* (stating that the "national importance" standard should not overemphasize the geographic breadth of an endeavor). We disagree. The Director's terminology does not mention geographic breadth at any point, but correctly points out that the evidence does not establish the endeavor's "broader implications." *Id.* at 890.[3]

Finally, as noted by the Director, the national shortage of truck drivers is not, in and of itself, sufficient to establish the national importance of the Petitioner's endeavor.[4] The Petitioner has not established how the Petitioner's creation of 10 new truck driving positions would resolve this shortage or impact it on a national level. In sum, the Petitioner has not established by a preponderance of the evidence the national importance of any impact his proposed endeavor would have.

III. CONCLUSION

Because the Petitioner has not established his eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the other two prongs and hereby reserve those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant did not otherwise meet their burden of proof).

The Petitioner has not established that he is eligible for, or otherwise merits, a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.

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[3] We acknowledge the Petitioner's contention that the Director erred by stating that "USCIS does not find the specific endeavor has substantial merit and national importance" at one point in the decision. The Director also briefly mentioned a lack of evidence of communications with customers, investors, or other interested parties while discussing national importance. Such communications are not a concern when analyzing the first *Dhanasar* prong, but rather relate to the second one, the Petitioner's ability to advance the proposed endeavor. However, these two sentences form a very small part of the larger decision, and do not impact the outcome of the case. As such, the claimed errors are, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

[4] We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.