U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26387250

Date: JUN. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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. *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of a 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 petition 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.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors 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.

II. ANALYSIS

The Petitioner initially proposed to continue working in their field for U.S. companies as a financial manager specializing in the agricultural sector with an aim to "progressively and positively benefit the United States business industry, and economy." The Petitioner represented that their endeavor was to work as a financial manager for U.S. companies in need of reorganization of their financial structures who sought to expand to Latin America. The record initially contained the Petitioner's personal statement styled as a "professional plan," evidence of open job opportunities they had applied and been considered for, educational credentials evaluation with certificates, resume, expert opinion letter, previous work experience documentation, awards received for work anniversary and participation in workplace engagement programs, letters of recommendation, and various reports and articles purportedly relevant to the Petitioner's claim of eligibility for a national interest waiver.[1] The record developed initially at the time of filing demonstrated that the Petitioner's proposed endeavor was essentially a job search. And the purpose of a national interest waiver is not to facilitate a petitioner's U.S. job search.

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

The Director issued a request for evidence (RFE) for additional evidence and clarification of the Petitioner's proposed endeavor to determine its substantial merit and national importance. In response to the RFE, and perhaps having conceded that their initial endeavor could not support a national interest waiver under the *Dhanasar* framework, the Petitioner submitted a "Definitive Statement," a revised resume, a new business plan outlining the Petitioner's plan for an entrepreneurial financial management company, and recommendation letters from individuals working with the Petitioner at his present employer.[2]

A. Substantial Merit and National Importance

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. The first prong focuses on the specific endeavor that the individual proposes to undertake. As stated above, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The record, which contains the Petitioner's initial statement, revised statement submitted with the RFE response, business plan, various reports, and articles, supports the Director's determination that the Petitioner's proposed endeavor to develop a financial consulting firm in Florida was substantially meritorious.

The Director concluded that the record did not demonstrate the Petitioner's proposed endeavor's national importance. In determining national importance, the focus is not on the importance of the industry in which the petitioner will work or even their past success. The focus is on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec.at 889. In *Dhanasar* we said that "we look for broader implications." Broader implications are not necessarily geographically evaluated; implications within a field which demonstrate a national or even international influence of broader scale can rise to a level of national importance. And substantial positive economic impacts, such as a significant potential to employ U.S. workers particularly in an economically depressed area, can also help a proposed endeavor rise to a level of national importance.

The Petitioner stated that small, medium sized, and minority owned businesses are critical to the economy but face existential threats stemming from a lack of cash flow, poor financial planning, and inflationary and pandemic-related pressures. The Petitioner contends that their services would support the survival of small, medium sized, and minority owned businesses by reducing failure rates. But, as the record reflects and the Petitioner states in their business plan, the Petitioner's targeted clientele is not required to adhere to internationally accepted accounting standards nor generally accepted accounting principles in financial reporting. The record does not adequately reflect by a preponderance of the evidence with material, relevant, or probative evidence how the Petitioner's

[2] A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc Comm'r 1998). Revisions submitted in response to an RFE constituting a materially different endeavor introduce ambiguity which prevents analysis into a proposed endeavor's substantial merit or national importance. The Petitioner's revisions here provided additional details with more information about how, when, and where the Petitioner will engage in their proposed endeavor. So the Petitioner's extensive revisions, whilst concerning, retained the character and nature of the proposed endeavor initially described by the Petitioner.

accounting services in line with generally accepted principles and international accounting standards or financial planning services would reduce failure rates for individual small, medium sized, and minority owned businesses in [redacted] Florida by addressing any of the existential threats the Petitioner identified: lack of cash flow, poor financial planning, and inflationary and pandemic-related pressures. And even if the record did reflect such a link, it would not be clear in the record how this would extend beyond the set of clients who would have availed themselves of the Petitioner's services such that it would elevate their endeavor to one of national importance.

The Petitioner's proposed endeavor did not demonstrate the potential for a prospective positive economic impact in the field rising to a level of national importance. The Petitioner stated that their endeavor "has significant potential to employ U.S. workers." Specifically the business plan anticipated that the endeavor would employ 50 employees generating over $2,000,000 in tax revenue in five years of operation. But these aspirations did not demonstrate the national importance of the endeavor because they, whether realized or not, would not extend beyond the endeavor itself to have an impact on a level of national importance. The Petitioner stated that the endeavor would be based in the State of Florida, specifically in the [redacted] Florida suburbs. The Petitioner submitted a graphical representation of distressed areas in the Central Florida area but did not list any specific areas by name or identifying characteristics. The record did not contain sufficient probative, material, or relevant evidence showing how the endeavor's hiring plan would influence the area's unemployment rate or how the endeavor's operations and revenue rose to a level of national importance.

And although the Petitioner identified the State of Florida as one of "strategic importance to the U.S. economy" they did not identify the strategic value of Florida to the U.S. economy separate and apart from any other state in the union's importance to the U.S. economy. The Petitioner highlighted Florida's status as a "trade hub to South America" and specifically emphasized South Florida's position in this "hub" for exports. It is unclear in the record how "exports" and the export industry meshed with the proposed services the Petitioner endeavored to provide in the [redacted] Florida suburbs. The Petitioner commented that Florida's "hub" status is exemplified by South Florida's ports and specifically the [redacted] for the ease of connection and links to South America and Brazil in particular. But the Petitioner's endeavor proposes to operate in Central Florida, specifically [redacted] and its suburbs, which are about 240 miles away from [redacted] is also home to a prominent [redacted] with daily [redacted] connections. The record does not contain any evidence linking the proposed endeavor's activities in Central Florida with business and trade "hub" activities in South Florida ports or at [redacted]

The Petitioner's endeavor also proposed to attract foreign direct investment to the United States. The Petitioner's endeavor identified the services it would provide: financial planning, strategic management, international accounting for corporate finance advisory, accounting and bookkeeping services in international tax planning and audits, and loss prevention with management and internal controls. The Petitioner contended that their services were critical for those foreign entities who sought to directly invest in the United States. They stated that such services would increase the confidence and reliability of investing in the United States for international, specifically Brazilian, investors. But the evidence in the record does not adequately establish that the services the Petitioner's endeavor proposed to provide would influence foreign direct investment to the United States at a level implicating national importance. In fact, the evidence in the record did not identify the magnitude of

foreign direct investment in the United States in total or the amount of foreign direct investment attracted by the Petitioner's proposed services in comparison. And whilst the Petitioner links foreign direct investment with job creation in general, the record does not contain evidence establishing by a preponderance of the evidence that any foreign direct investment procured as a result of their proposed endeavor would create jobs on a magnitude which elevated their endeavor to a level of national importance.

B. The Remaining Prongs of the *Dhanasar* Framework and Categorical Eligibility

In evaluating whether a petitioner is well positioned to advance their proposed endeavor under the second prong of *Dhanasar*, we review (A) a petitioner's education, skill, knowledge, and record of success in related or similar efforts; (B) a petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing; (C) any progress towards achieving the proposed endeavor; and (D) the interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons. And the third prong requires a petition 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.

As the Petitioner has not established that they meet the first prong of the *Dhanasar* framework, they have not shown that they are eligible for and otherwise merit a national interest waiver under the remaining prongs, and we reserve these issues. *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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 is otherwise ineligible).

We, along with the Director, also note the Petitioner's apparent ineligibility for classification as a member of the professions holding an advanced degree for implications related to any future filings. Specifically, the Director correctly stated that the Petitioner had not earned the single-source equivalent of a U.S. master's degree because their equivalency was determined after the combination of their education with their work experience. The regulation does provide an alternative pathway to demonstrating categorical eligibility as an advanced degree professional if a petitioner demonstrates they have earned the single source equivalent of a U.S. bachelor's degree followed by five years of progressively responsible work experience. Whilst the Petitioner has submitted evidence of having earned the single source equivalent of a U.S. bachelor's degree and five years of work experience in the record, we have concerns about the reliability of the experience evidence and if it described bona fide work experience of a progressive nature. The record contains an experience letter that reflects the Petitioner's work experience with [redacted] from 2003 to 2017 was as a business controller and financial manager. But the record also contains a severance notice from the Brazilian Ministry of Work and Labor describing that the Petitioner worked with [redacted] as a cultural services manager. The inconsistent evidence submitted into the record by the Petitioner casts significant doubt on the Petitioner's categorical eligibility as well as other aspects of their immigrant petition. *See Matter of Ho*, 19 I&N Dec. 582 at 591 ("Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition"). The Director did not evaluate whether the Petitioner demonstrated eligibility for EB-2 classification as an individual of exceptional ability. But since the record did not demonstrate that the Petitioner merited a national interest waiver under the *Dhanasar*

framework, there is no requirement to reach the issue of the Petitioner's categorical eligibility for EB-2 classification today and we will reserve it. *See INS v Bagamasbad*, 429 U.S. at 25 and *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). The Petitioner has not met their burden of proof with persuasive material, relevant, and probative evidence which by a preponderance demonstrates the national importance of their proposed endeavor. So their appeal must be dismissed.

ORDER: The appeal is dismissed.