U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28581443

Date: NOV. 08, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur seeking to sell hair care products, seeks second preference immigrant classification as an individual of exceptional ability, 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 did not qualify as an individual of exceptional ability and 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.

II. ANALYSIS

The Petitioner claimed eligibility for the EB-2 classification as an individual of exceptional ability. The Director concluded that the Petitioner did not qualify as an individual of exceptional ability for not having met three of the six criteria. Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *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"); *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).

The Director did not determine whether the Petitioner's endeavor has substantial merit but concluded that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar*'s analytical framework. The Director also concluded that the Petitioner did not meet the second or third prong of *Dhanasar*. On appeal, the Petitioner contends that the record demonstrates that he meets all three prongs of *Dhanasar*.

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.

In the initial filing, the Petitioner stated on his Form I-140 that he intends to work as a general operations manager. The Petitioner submitted his business plan and personal statement indicating that his proposed endeavor is to establish and operate a cosmetics factory called [redacted] headquartered in [redacted] Florida. The Petitioner stated that he has operated another company, [redacted] in Brazil for last ten years and [redacted] will be an extension of this existing business. According to the Petitioner's business plan, his company will engage in the following activities: 1) new product development management; 2) new technologies development; 3) courses for hairdressing professionals; 4) culture mentoring and implementation; 5) customer relationship management; 6) cosmetic manufacturing. The business plan also includes a market analysis that provides the background information regarding the increasing revenue and growth expectations for the beauty and cosmetics market in general and demonstrates that this field has a vast and promising market for product development and business management. Based on the information, we conclude that this endeavor in the area of entrepreneurialism has substantial merit.

However, we agree with the Director that the record does not sufficiently demonstrate the endeavor's national importance. On appeal, the Petitioner reiterates the claims previously made in response to the Director's request for evidence (RFE). The Petitioner contends that his endeavor has national

importance based on industry reports and articles that forecast an increase in demand and revenues in the beauty and cosmetic market. The Petitioner also contends that his entrepreneurial endeavor, which includes development of hair care products, falls into STEM field which is an important priority for the U.S. government. Additionally, the Petitioner discusses the importance of immigrant entrepreneurship for contributing to the labor supply and the U.S. economy overall based on the National Bureau of Economic Research paper and White House policy documents.

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. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Here, the Petitioner does not identify independent and corroborative documentation to support how working as a general operations manager of his own cosmetics business stands to sufficiently extend beyond his company and future clients to broadly impact the industry or the U.S. economy. Instead, the Petitioner's claims of national importance rely on generalized discussion of the industry's importance, the field's overall outlook, and the value of immigrant entrepreneurship.

The record includes an expert opinion letter from [redacted] an assistant professor of professional practice at [redacted] University in New Jersey and adjunct associate professor of business at [redacted] University in New York. Instead of discussing the details of the Petitioner's proposed endeavor or its impact, [redacted] generally summarizes the Petitioner's experience in managing his own cosmetic and hair product companies in Brazil. The expert letter then contends that the Petitioner's endeavor has significant potential to employ U.S. workers and other substantial positive economic effects because the hair, skin, and nail salons generate significant revenues within the overall beauty market and the Bureau of Labor Statistics (BLS) provides strong growth expectations for barbers, hairdressers, and cosmetologists in the United States.

The expert letter's claim on national importance is not supported by any specific details regarding the Petitioner's actual proposed endeavor or his company's impact to the industry. The letter offers vague and generic assertions about how the Petitioner's endeavor "impacts a matter that a government entity has described as having national importance or is the subject of national initiatives" and how small businesses "have been critical in revitalizing economical distressed areas." [redacted] also reprises the Petitioner's arguments regarding the value of immigrant entrepreneurs, stating that "Latinos are the fastest growing group of entrepreneurs" and highlights the government's efforts in cultivating "entrepreneurship among underrepresented groups, including women, minorities, and veterans." USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony, but USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, the expert letter focuses on the importance of the industry and profession, not the specific impact of the proposed endeavor.

The Petitioner submitted many recommendation letters from his business associates (i.e., his legal advisor, his financial advisor, and distributors of [redacted] hair care products) as well

as his former co-workers at [redacted][2] discussing his success as an entrepreneur, managerial skills, and sale strategies. The record also contains evidence of recognition received by the Petitioner, specifically as a finalist for the [redacted] category in 2019" and a winner of 2016 [redacted] award "in the hair transformation category with his first shampoo [redacted]." The Petitioner also included evidence of several media appearances via social media, network TV, and magazines in Brazil for marketing of his company and its hair care products. Although we acknowledge the Petitioner's entrepreneurialism and accolades for his hair care products, the evidence relating to the Petitioner's experience, record of success, and skills relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong.

We noted in *Dhanasar* that "[a]n 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.* at 889. To this end, we evaluate whether the Petitioner's hair care products and his methodologies for developing these products contributes to national or global implications in the field of beauty industry. The Petitioner's business associates, especially the [redacted] distributors, have repeatedly referred to the Petitioner's hair care products and their sales in the global market, including "Germany, Ukraine, France, Italy, Portugal, Poland, Switzerland, among others." However, these letters do not address how the Petitioner's endeavor of developing and manufacturing hair care products will substantially benefit the beauty and cosmetics industry in the U.S., or how the methodologies of engineered hair care products differ from or improve upon those already available and in use in the United States. These letters fall short of identifying any specific impact or contribution the Petitioner has made to the cosmetic industry by his hair care products.

On appeal, the Petitioner offers a new document entitled "Statement of Significant Contributions." This document appears to be written by a group of unidentified business associates and professionals who are purportedly familiar with the Petitioner's hair care products and their widespread usage. However, the Petitioner does not explain or demonstrate how these individuals are qualified to evaluate the Petitioner's significant contribution to the field of beauty care products. The document lists all the hair care products developed by the Petitioner and a total of 145 industry types that are directly or indirectly affected by the Petitioner's products, including hotels, pet-care, e-commerce, packaging, marketing, advertising, and fashion industries, to name a few. The document also claims that celebrities, international magazines, and other social media have shown positive reviews on effectiveness of the products. The document attests to popularity or effectiveness of hair care products but does not contain corroboration by qualified experts that provide persuasive details about the quality, innovation, or significant impact of the hair care products, rising to the level of national importance contemplated by *Dhanasar*.

The record also contains a document entitled "Intellectual Property Statement" signed by [redacted] a technical manager of [redacted] in Brazil, where the Petitioner's hair care products are developed and manufactured. The one-page statement describes the Petitioner as the

[2] According to Form ETA-750 Part B, Application for Alien Employment Certification, the Petitioner worked at [redacted] in Brazil as a manager and corporate director from November 2004 to December 2011.

"main developer, idealizer, and creator of highly innovative products in the market." However, the record does not contain independent and corroborating evidence of such statement. Instead, the record contains safety data sheets from the Petitioner's [redacted] bearing the same technical manager's name, [redacted] These data sheets reveal information about the composition and ingredients for each of the hair care products, but the Petitioner does not offer any official certifications showing trademarks or branding of these products, or letters from independent third-party experts who attest to the innovative and original engineering, demonstrating significant impact to the cosmetic hair care industry.

In *Dhanasar*, we also stated 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." *Id.* at 890. In the business plan, the Petitioner's company projects that its gross sales will increase from $3,307,200 in the first year to $21,369,600 by the fifth year. The plan also projects hiring 43 employees with an annual payroll expense of $2,554,550. However, the business plan does not sufficiently detail the basis for its financial and staffing projections, nor does it adequately explain how these projections will be realized. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also contends that his endeavor will have indirect employment from "other connections and services and from the consumption effect [supply chain effect]." In the appeal brief, the Petitioner provides a separate projection for indirect job creation based on the data from the Economic Policy Institute (EPI)'s employment multipliers and states that his project of 43 direct jobs will translate to "an estimated 187.74 to 4,014.41 indirect jobs in the chemical product and preparation manufacturing industry and 121.73 to 2,600.54 indirect jobs in the management of companies and enterprises." However, the Petitioner does not provide a copy of EPI multiplier report to verify and support his calculation methods or explain how he arrived at such a wide and varying range of numbers asserted on the brief. The Petitioner's unsupported statements are insufficient to meet his burden of proof without relevant, probative, and credible evidence. *See id.*

Furthermore, the Petitioner discusses the unemployment rate and poverty status in Florida in general terms but does not specifically indicate that he will operate his company in an economically depressed area of Florida, or that he would employ a significant population of workers in that area. Instead, the Petitioner only states that "I will have to do a qualified research in the localities to understand the biggest needs and local desires" in order to fulfill "social responsibility" of his company.

We conclude that the record does not demonstrate that his endeavor of establishing a cosmetic factory and developing hair care products extend beyond his company and future clients, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The economic benefits that the Petitioner claims depend on numerous factors and the Petitioner did not offer sufficient evidence that would corroborate the claimed results.

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. at 25 ("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. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.