U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28949376

Date: NOV. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business consultant, seeks employment-based second preference (EB-2) 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 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 the record did not establish: the national importance of the proposed endeavor or that it would be in the United States' interest to waive the requirement of a labor certification. 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, 889 (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, 936 F.3d 868 (9th Cir. 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner's evidence establishes that he qualifies for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The Petitioner proposes to operate his own business, [redacted] which offers "strategy and management advisory services, including providing advice on an acquisition, development of plans to restructure entities' sales forces, creation of new business strategy, and provision of strategy for business expansion and reach."[2] The Petitioner stated that [redacted] "focuses on four key areas– financial, commercial, marketing, and purchasing consulting" and its "main goal . . . is to help clients streamline their internal processes to achieve sustainable growth through better financial performance." Further, the Petitioner "will provide opinions on the efficiency of complex cross-border business and investment structures, perform assessments of each client's financial situation, and provide customized strategies for investing in the United States to a predominantly Latin American clientele." In so doing, his services also include procurement and designing plans for international business structures. He plans to target small and medium sized businesses in Florida.

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual 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 support of the national importance of his proposed endeavor, the Petitioner provided industry articles and reports, three advisory opinion letters, a business plan, and recommendation letters, among other pieces of evidence. He explained that his company will contribute to the nation's economy through job creation and tax revenue. Specifically, his company will "increase from 2 employees in Year 1 to 6 employees in Year 5" with "payroll expenses to increase from $120,000 in Year 1 to $436,006 in Year 5" and paid taxes totaling $376,710 by the year 2025. He explained that he will "play[] an indispensable role in the establishment of numerous U.S. companies, operating in a broad range of industries, including construction, customized furniture, food and food processing, freights and logistics." The Petitioner described the impact of his proposed endeavor, stating that:

[2] The Petitioner stated on his Form I-140 that his proposed job title is "business consultant." In response to the Director's request for evidence (RFE), the Petitioner refers to himself as a "business management specialist," while one of the three advisory opinions calls the Petitioner a "general and operations manager." The Petitioner should be aware of this inconsistency in any future filings.

> These companies will contribute immensely to enhancing job opportunities, boosting the U.S. economy and competitiveness, and increasing tax revenues. Through my guidance, these investors are able to minimize operational costs, comply with U.S. market regulations, and enhance the profitability of their internal operations, find a niche market in their area of specialization, building solid commercial relations, thus making their US enterprise more attractive. This work is fundamental, as many investors wish to expand and diversify their businesses abroad but are not familiar with the U.S. business arena . . . .

Based upon the year one to five growth projections listed in the business plan, we conclude that the proposed endeavor does not appear to operate on a scale rising to the level of national importance. Specifically, we conclude that the evidence provided does not sufficiently establish the Petitioner's proposed endeavor services would have a significant potential to employ U.S. workers, generate broad impact outside the individual companies involved, or offer substantial positive economic effects. Further, the record does not evidence a sufficiently direct connection between the proposed endeavor activities and either job creation, tax revenue, or economic growth. While any basic economic activity has the potential to positively impact the economy, we conclude the record does not show benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. See id. at 890.

Although the proposed endeavor may benefit the client companies that engage the Petitioner for his services, the record does not sufficiently show that such benefits would rise to the level of national importance. Even if the evidence established that the Petitioner's services directly resulted in enabling a company to improve performance, sustain growth, and operate more productively, he has not explained how these benefits would reach past the individual parties involved. Further, the Petitioner has not established that his services directly impact the standing of U.S. companies or foreign businesses expanding into the U.S. market, nor how individual companies' standing is nationally important.

Much of the Petitioner's evidence in support of the proposed endeavor's national importance, including articles and reports, as well as the statistics about foreign direct investment (FDI), trade, and small businesses, relates to how these industries and the professions within them are important. As the Director noted, in determining national importance, the relevant question is not the importance of the 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 id. at 889. Here, the Petitioner relies upon the importance of various industries and professions as sufficient to establish the national importance of his proposed endeavor. While we agree that business consulting, small businesses, FDI, and trade are important, such evidence does not necessarily establish the national importance of the specific proposed endeavor.

We further acknowledge the wide applicability of business consulting services to many industries within the government and in the private sector, as well as the size and economic worth of these industries and their projected growth. Although the Petitioner may tailor or customize his services to individual clients, he has not demonstrated how his proposed endeavor is better, different, or costs less than other business consulting services already available in the United States. The general need for and applicability of business consulting services is not necessarily sufficient to establish the national

importance of the proposed endeavor, particularly as the labor certification process is specifically designed to address the demand for and shortages of workers in the United States.

The Petitioner asserted that his endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives. However, the Petitioner has not provided a sufficiently direct connection between his proposed endeavor and any national initiatives. For example, while bilateral trade, FDI, and small businesses are nationally important and may be the subject of government initiatives, the Petitioner has not explained how his specific endeavor within these industries is the subject of national initiatives. To further illustrate, the Petitioner has not suggested that governmental initiatives fund his proposed endeavor or that his business is named in a particular initiative's announcement and plans. As such, the Petitioner has not established that the proposed endeavor is the subject of national initiatives, nor has he established that his endeavor operates on a scale that stands to impact matters that a government entity has described as having national importance.

We reviewed the three advisory opinions, one each from [redacted], a marketing professor at [redacted] University; [redacted] a professor at several universities including [redacted] University; and [redacted] an accounting professor at [redacted] University. In the national importance sections of their opinion letters, the authors discuss the importance of the profession and industry, cite statistics on small business and trade, as well as explain how these industries spur economic growth and are the subject of national initiaves. The authors also reference the wide applicability of the Petitioner's services to different companies and sectors, the importance of skilled immigrants and entrepreneurs, as well as how the endeavor will increase revenue, tax production, and create jobs.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id. Here, the letters restate claims the Petitioner already made concerning the national importance of the proposed endeavor and which we analyzed above. The authors do not provide additional analysis or corroborating details to support the restated claims. Therefore, we conclude the letters are of little probative value in this matter.

The support letter authors do not demonstrate detailed knowledge of the proposed endeavor or explain why it is nationally important. Although, various authors provide examples of and cite statistical results to show the value and impact of the Petitioner's services in their workplaces, the claimed impact appears to be localized to the particular project or company that hired the Petitioner. In taking the past results the Petitioner achieved for other companies and extrapolating them to illustrate the results that the Petitioner may produce through his proposed endeavor, we still cannot conclude that the impact would reach a level of national importance. While enabling a company and its leaders to increase profits, grow and hire more workers, or expand business into new locations are indeed important for the parties involved, neither the authors of the letters, nor the record in general, sufficiently supports a finding that the Petitioner's proposed endeavor has national importance. Finally, the record contains little corroborating evidence to substantiate the results and impact the authors attribute to the Petitioner.

On appeal, the Petitioner contends the Director did not examine all evidence and did not review the evidence under the proper standard of proof. The Petitioner specifically references a lack of analysis of the business plan, the three advisory opinion letters, and his personal statement, among other pieces of evidence. However, when USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993). We conclude that although the decision does not individually analyze each piece of evidence, it reflects the Director's reasoned consideration of the evidence, such as through specific mention of the business plan and quotations from documents in the record.

The Petitioner acknowledges "the record may not include specific details about . . . the magnitude of impact on tax revenue or foreign investment," but argues this "does not diminish the potential national importance of the proposed endeavor." We recognize the value of general information that contributes to understanding the potential benefits and significance of the proposed endeavor. However, unsubstantiated assertions do not constitute evidence. See, e.g., Matter of S-M-, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). The assumption underlying the Petitioner's appeal appears to be that had the Director reviewed the record under the preponderance of the evidence standard, they would necessarily have viewed the evidence in the way the Petitioner advocates and therefore agreed with the Petitioner's conclusions. However, as our above analysis demonstrates, at a preponderance of the evidence standard, we conclude the Petitioner has not provided sufficient evidence or arguments to overcome the Director's determinations.

III. CONCLUSION

The evidence does establish the national importance of the proposed endeavor. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of eligibility under the remaining prongs outlined in Dhanasar would serve no meaningful purpose. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "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).

The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.