U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28446237

Date: OCT. 3, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial engineer, seeks classification as a member of the professions holding an advanced degree. *See* 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. *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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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 a member of the professions holding an advanced degree 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.

While 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, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that 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 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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 requirement of a job offer is warranted.

Initially, the Petitioner asserted that his "proposed endeavor is to improve the performance of U.S. organizations and companies through productive and logistical systems, by providing consultations, auditing, and training regarding the Integrated Management Systems—Health, Safety, Environment, and Quality (HSEQ)." He stated that his endeavor will "advance enterprises' integrated systems following international occupational regulations as well as promote the development of small- and medium-sized companies (SMEs) [sic] . . . by improving SMEs' performance in reducing manufacturing costs, increasing efficiency of logistics, and assuring health and safety of the employees among others." In a document titled "personal statement, the Petitioner elaborated, "The main objective of my project is the development of activities in the State of Florida in the cities of [redacted]" He further asserted that his "project will be implemented through the creation of a company whose main activity is the offer of advisory, consulting, audit, implementation and training services in integrated management systems-HSEQ." The Petitioner also included an organizational chart for his proposed company in his personal statement, indicating that he would be the "CEO," directly supervising three workers, each of whom named '[redacted]' with the job title of "ISO manager," and that each [redacted] would in turn supervise two unnamed workers with the job title of "advisor," for a total of 10 workers.

We note that the Petitioner's assertion that he will employ and directly supervise three individuals each named [redacted] and each with the job title of "ISO manager" casts doubt on the veracity of his description of the proposed endeavor at the time of filing. The record does not contain probative, supporting documentation to establish that the Petitioner will directly supervise three individuals with identical names and the same sets of knowledge, skills, and abilities required to perform jobs with identical titles for his startup consulting company. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988); *see also* 8 C.F.R. § 103.2(b)(1) (requiring petitioners to establish eligibility for requested benefits at the time the petition is filed). The doubt cast on the Petitioner's description of the proposed endeavor at the time of filing, therefore, reduces the reliability and sufficiency of the initial description of the proposed endeavor and

of the remaining evidence offered in support of the Form I-140, Immigrant Petition for Alien Workers. *See id.*

In response to the Director's request for evidence (RFE), the Petitioner reiterated that he "intends to help small and medium-sized businesses implement an integrated health, safety, quality and environmental management system that will provide for an effective management of operational procedures fostering a continued improvement of the business as well as their economic growth." He further stated that he would "implement[] tailor-made solutions to meet the specific needs of customers and other interested parties, reduce the probability of occurrence of serious, minor or fatal accidents in the workplace, reduce damage of the machinery, infrastructure, and the environment."

The Director acknowledged the Petitioner's RFE response; however, the Director concluded that "[t]here is no evidence that the endeavor would have significant potential to employ U.S. workers or that the endeavor would provide substantial positive economic effects," referencing *Dhanasar* 26 I&N Dec. at 888-90. In turn, the Director concluded that the record did not establish the Petitioner's proposed endeavor of providing health and safety consultancy services would "stand to benefit anyone other than the potential company and its clients." The Director ultimately concluded that "the [P]etitioner has not established that the proposed endeavor is of national importance." The Director further concluded that the record did not satisfy the third *Dhanasar* prong, although the Director determined that the record satisfies the second *Dhanasar* prong and that "the proposed endeavor has substantial merit," as required under the first *Dhanasar* prong. *See id.* at 888-91.

On appeal, the Petitioner asserts that the Director erred by "confus[ing] the Petitioner's proposed endeavor with his proposed employment." The Petitioner reiterates that he "intends to begin a business[] that will partner with American businesses in which he will provide services of advising, consulting, auditing, implementing, and training in integrated management systems—HSEQ—documenting experiences and good practices, and to applicate those in the business industry, generating a notorious improvement in U.S. organizations." He also reiterates that he intends "to support small businesses in the United States to progress both economically and organizationally, without neglecting the implications related to the management of their organization, and the health and safety of their workers." The Petitioner further states on appeal that the record "contained ample documentation to corroborate the economic benefits of the Petitioner's proposed endeavor by and through the personal statements submitted with the initial petition and RFE response." The Petitioner also references publications in the record regarding generalized information about organizational development, which the Director discussed in the decision, finding that they do not address how the proposed endeavor may have national importance but acknowledging, "The articles do demonstrate substantial merit for the proposed endeavor, however."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's reliance on appeal on publications in the record regarding generalized information about organizational development is misplaced. As noted, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The publications regarding generalized information about organizational development do not address the Petitioner, the specific endeavor he proposes to undertake, and how the specific endeavor may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Therefore, the publications regarding generalized information about organizational development do not establish how the proposed endeavor may have national importance. *See id.*

Turning to the Petitioner's personal statements that he asserts on appeal provide "ample documentation to corroborate the economic benefits of [his] proposed endeavor," we note again that the initial personal statement submitted with the Form I-140 casts doubt on the veracity of the Petitioner's statements in the record that reduces the reliability and sufficiency of the initial description of the proposed endeavor and of the remaining evidence offered in support of the Form I-140. *See Matter of Ho*, 19 I&N Dec. at 591; *see also* 8 C.F.R. § 103.2(b)(1). Specifically, the initial personal statement indicated that the Petitioner would directly supervise three individuals, each of whom named [redacted] with identical job titles of "ISO Manager." The likelihood that the only workers whom the Petitioner could identify in his personal statement all have the same name, and that all three of those identically named workers would each have the knowledge, skills, and abilities required to perform the same supervisory roles in the Petitioner's startup company is rather low, without probative, supporting evidence. That casts doubt on the veracity of the Petitioner's initial personal statement and, consequently, on that of his subsequent personal statement and the record in general. *See id.*

To the extent that the record may be reliable and sufficient for the reasons discussed above, the Petitioner's own personal statements underscore that the proposed endeavor may benefit his own company and that of his clients, but it does not indicate how the endeavor may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *See Dhanasar*, 26 I&N Dec. at 889-90. For example, as noted above, the Petitioner's personal statement submitted in support of the RFE response asserted that his company would "implement[] tailor-made solutions to meet the specific needs of customers and other interested parties," but it does not establish how meeting his small- and medium-sized company clients' health and safety needs—which is to say their need to meet existing health and safety requirements—may have broader implications extending beyond his clients and their employees. *See id.* Similarly, although the Petitioner asserted in his personal statement that his endeavor "will be assisting companies to minimize the risk of unnecessary lawsuits, prevent illness and injury, maximize revenue, boost employee morale, improve customer satisfaction, protect and preserve the environment, among other benefits," that describes guiding his clients to meet existing health and safety requirements, rather than being of the type of "improved manufacturing processes or medical advances" contemplated by *Dhanasar*. *See id.*

In turn, although the Petitioner asserted that he intends to employ himself, three individuals each named [redacted] and six unnamed workers in [redacted] Florida, he does not elaborate on the wages he would pay those workers or other details that would assist in determining whether employing those 10 workers in those locations for his endeavor would have the type of "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area" contemplated by *Dhanasar*. *See id.* To the extent that the Petitioner asserts that his endeavor may affect his clients' employment of U.S. workers, the record similarly does not establish the number of workers his endeavor would enable his clients to employ, the type of jobs those workers would perform, the wages his clients would pay those workers, the locations in which those workers would work, and other details that would assist in determining whether the endeavor would have the type of "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area" contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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).

III. CONCLUSION

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

ORDER: The appeal is dismissed.