U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28564714

Date: OCT. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human talent administrator, seeks second preference 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 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 qualified for the EB-2 classification as a member of the professions holding an advanced degree, but 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 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.

If 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 Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. [2] The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner did not provide his job title on the proposed employment section on Form I-140, Immigrant Petition for Alien Workers. Instead, the Petitioner's cover letter dated April 7, 2022, describes his proposed endeavor as follows:

> [The Petitioner] will contribute to U.S. companies needing to adapt to the changing demands of the U.S. labor market by detecting training needs and designing a specific training plan for U.S. companies that incorporates the use of digital tools and is compliant with current labor legislation.

In the personal statement submitted with the initial filing, the Petitioner described himself as a "Human Talent Administration Engineer" and explained that his plan "is to start consulting and advisory services for companies with 5 to 500 employees through an office located in [redacted] Florida, and then expand to other states such as Texas." The Petitioner further stated that his services will start with "an analysis of compliance with current labor legislation in the United States," then transition to building "the Training Plan: it is a management instrument that contributes to the development of the strategies for the employer and the employee," and culminate in execution of the training plan. Although the Petitioner elaborated that the training plan will develop "labor competencies" or "close the gap detected between the responsibilities of the position and those held by the collaborators," he did not provide specific contents of his training plan or clearly communicate what he intends to achieve for his clients through his services.

In response to the Director's request for evidence (RFE), the Petitioner provided a separate statement of his proposed endeavor dated September 9, 2022, and an updated personal statement dated September 6, 2022. The Petitioner clarified his endeavor as follows:

> My proposed endeavor is to build on my extensive experience with the area of Human Resources such as training and coaching processes, salary bands, job analysis, administrative process improvement, executive coaching, personnel selection, organizational development and new ventures to apply and develop training programs and identification of new jobs post Covid-19 pandemic for companies and workers in the USA in order to facilitate the recruitment and adaption of workers for existing vacancies in companies and the labor market.

[2] The Petitioner possesses a U.S. equivalent of a bachelor's degree in talent management engineering and human resources from Universidad [redacted] and a master's degree in business administration and management from Universidad [redacted] in Ecuador.

The Petitioner also added details regarding the training plan that he proposed for American companies, such as the training's objectives, topics (i.e., strategic planning, closing knowledge gaps, organizational culture, human relations, etc.), and methodologies (i.e., professional conference, remote training, interprofessional knowledge exchange, didactics and practice, etc.).

The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of *Dhanasar*.[3] The Director determined that the record does not demonstrate that the Petitioner's endeavor has broad implications to the field or industry or that it would offer substantial economic effects or has significant potential to employ U.S. workers, rising to the level of national importance.

On appeal, the Petitioner claims that the Director displayed a negative bias towards his case by stating that the Petitioner was "evasive in specifying his proposed endeavor." As discussed above, we also find that the Petitioner initially offered vague and generic statements about his endeavor and his updated statements submitted in response to the RFE provided a more detailed and specific description of his endeavor. As the Director subsequently found that the revised statement of the endeavor has substantial merit, we determine that the Director's wording simply indicated a lack of clarity in the initial description of the endeavor and is neither dismissive nor prejudicial to the outcome of the case.

The Petitioner also claims that the denial contains instances of "misunderstanding and misapplication of law." Specifically, the Petitioner contends: "[w]hile the substantial positive economic effects may be taken into consideration for the purposes of determining the national importance of a proposed endeavor, it is NOT required by the precedent case decision or the relevant regulations that one must provide a projection of US economic impact to survive a Prong 1." The Petitioner also contends that the Director's "adamant" emphasis on showing of job creation is "an abuse of the adjudicating Officer's discretion."

In determining national importance under the first prong, we noted in *Dhanasar* 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." *Dhanasar,* 26 I&N Dec. at 889. We further stated in *Dhanasar* 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. Therefore, the Director is bound by the precedent decision to not only look for broader implications of the proposed endeavor in a particular field but also evaluate whether the endeavor has potential to employ U.S. workers or has other substantial positive economic effects. Here, the Director considered the appropriate standards laid out by *Dhanasar* and properly evaluated the endeavor's positive economic effects and its potential in creating jobs, in addition to its broad implications in the field.

The Petitioner further claims that the Director's decision was arbitrary and capricious because "no piece of evidence was formally or substantially analyzed" and the Director reached conclusions "without referring to any of the pieces of evidence that the Petitioner provided in the initial filing as well as in the RFE." The Petitioner contends that there was "ample evidence" to support national

[3] The Director also found that the Petitioner did not meet the second or third prong of the *Dhanasar*'s analytical framework.

importance but the Director "did not contemplate the totality of the evidence submitted." However, upon reading the denial, we observe that the Director evaluated and discussed various evidence submitted by the Petitioner, including the letters of recommendation, personal statements, the business plan, and articles and industry reports on importance of small businesses. Upon de novo review of the evidence submitted with the initial filing and in response to RFE, we agree with the Director that the totality of evidence do not demonstrate national importance as contemplated by *Dhanasar*.

In the initial filing, the Petitioner submitted several reports and articles regarding the value of a small business consultant and the importance of small businesses to the U.S. economy and job creation, as well as the White House's fact sheet on promoting competition in the American economy and printouts of the U.S. Small Business Administration (SBA) website pages. Although we recognize the value of small businesses and their contribution to job growth and economy in general, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." *See Dhanasar*, 26 I&N Dec. at 889. However, none of the articles or reports provided in the initial filing specifically referenced the Petitioner's endeavor and how it will directly impact the field or the U.S. economy.

The Director issued the RFE after determining that the initial filing lacked "sufficient, independent and objective evidence" demonstrating that the Petitioner's endeavor would have significant impact to the field or the U.S. economy. Instead of submitting independent and corroborating evidence of the specific endeavor's "potential prospective impact," the Petitioner offered clarifying statements about his endeavor, two additional recommendation letters from his former co-workers, and a business plan.

The recommendation letters praise the Petitioner's knowledge in the human resources area and discuss particular projects and trainings that the Petitioner successfully handled, but they do not provide details regarding the Petitioner's proposed endeavor or how it will specifically impact the field of human resources or the U.S. economy. The record also contains a letter from a legal representative of a rubber manufacturing company who sought the Petitioner's professional advice and training for human resources related issues. The author attests to the Petitioner's knowledge and high-quality services and declares that he has made "a significant impact" to the company but does not discuss how such impact translates to any broad implications to the field.

Similarly, the letter from the president of the Association of Professional Engineers Administrators of [redacted][4] asserts that the Petitioner is knowledgeable in labor laws of Ecuador and had "a significant impact" on the organization. However, the letter does not suggest that the Petitioner's methodologies or techniques implemented are widely spread or used in the United States, or that it has significant potential to advance the human resources field, as contemplated by *Dhanasar*: "[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. Here, the record is insufficient in that his endeavor's specific impact will extend beyond himself and his clients to impact the field nationally.

[4] The author explains that this is an organization of professional administrators who provide advice on administrative procedures to public and private companies in the area of [redacted] in Ecuador.

Furthermore, the record does not support that his company will have "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890. Although the Petitioner offered a business plan for his consulting company, "Human resources EP Consulting," he has not provided persuasive details concerning how he intends to grow his company. The Petitioner's business plan projects that the company will have a revenue of $750,000 in the first year "with a growth of 35% after two years," but does not sufficiently demonstrate the basis for its financial projections. The Petitioner also provided a letter from a company named [redacted] in Florida that expressed interest in hiring the Petitioner as a consultant for human resources and training. However, this single letter of interest does not corroborate the nature or numerosity of clients or clients' projects to support the claims that his endeavor will have substantial economic impact.

We acknowledge that any offer of goods or services has the potential to impact the economy; however, the record does not support the Petitioner's company would operate on such a large scale that would benefit the U.S. economy rising to the level of national importance. In addition, the record does not demonstrate that the company will provide substantial impact to any economically depressed areas. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In summation, the record does not demonstrate that the Petitioner's endeavor has broad implications to the field or that it would offer substantial economic effects. Therefore, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and is not eligible for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second or third 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 he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.