U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28427961

Date: OCT. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an investment consultant and attorney, 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 that, although the Petitioner qualifies for the underlying classification, the evidence did not establish the national importance of the proposed endeavor and that a waiver of the requirement of a 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, under section 203(b)(2) of the Act. Next, a petitioner must then demonstrate 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

[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).

- On balance, waiving the job offer requirement would benefit the United States. [2]

II. ANALYSIS

The Petitioner earned a bachelor's degree in law from a Brazilian university in 2012. According to the Petitioner's résumé, he currently works in Brazil as a lawyer and CEO of [redacted] specializing in tax, business, and real estate law. In addition, he works as an investment consultant and co-owner, with his father, of [redacted] Florida. The Petitioner entered the United States in December 2021 as a B-2 nonimmigrant visitor for pleasure and filed this petition in June 2022.

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. Therefore, the primary issue before us on appeal 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 first prong of the *Dhanasar* framework, "substantial merit and national importance," focuses on the specific endeavor that 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. For the reasons discussed below, the Director determined, and we agree, that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.[3]

Within the Petitioner's initial submission, he provided a business plan indicating his intention to open his own company in Florida to offer consulting services to foreign clients interested in investing in the U.S. real estate market. The business plan asserts that these services will benefit the "U.S. real estate sector, which is a major contributor to the economic growth of America," by enabling foreign direct investment in the United States that will generate economic growth; and stimulating the U.S. economy through the creation of 11 new jobs within five years.

Specifically, the business plan indicates that the company will employ a CEO (the Petitioner), a president (the Petitioner's father), an administrative assistant, four investment specialists, two lead agents, and two sales and marketing specialists. The included financial projections estimate that the company will have total payroll expenses of over $508,757, commissions and sales revenue of $1,000,000 and will generate $182,890 in tax revenue in its fifth year of operations. The business plan states that the company will be headquartered Florida and will target Florida.

The Director issued a Notice of Intent to Deny (NOID) the petition, advising the Petitioner he would need to provide additional evidence addressing the national importance of the proposed endeavor. In response, he submitted an amended business plan and provided two advisory opinion letters, from Professor S-L-M- at [redacted] University School of Law and Professor V-L- at [redacted]

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] While we may not discuss every document submitted, we have reviewed and considered each one.

University.[4] The amended business plan emphasizes that the proposed endeavor "will result in both direct and indirect job creation, increasing taxes paid to the U.S. government through foreign investments in the U.S.," thereby "improving the U.S. economy." It provides that according to calculations published by the Bureau of Economic Analysis, the proposed endeavor will generate direct effects on employment equivalent to 24 jobs and on household earnings equivalent to $876,029 by its fifth year. In addition, the amended business plan indicates that according to multipliers provided by the Economic Policy Institute, the proposed endeavor would generate 46 indirect jobs by Year 5.

The Director acknowledged the Petitioner's amended business plan for his company and the letters submitted in response to the NOID but determined that he had not established the national importance of his specific proposed endeavor. On appeal, the Petitioner asserts that the Director did not give sufficient weight to the information contained in his business plans and expert letters. The Petitioner maintains that his proposed endeavor "can impact numerous U.S. companies, institutions, and individuals" because it targets foreign companies and individuals in need of investment consulting services.[5]

Regarding the advisory opinion letters, in addressing the first prong of the *Dhanasar* framework, both professors state that the Petitioner's proposed endeavor "impacts a matter that a government entity has described as having national importance or is the subject of national initiatives." Specifically, they assert that according to information dated 2020 and posted on The White House.gov, "discussions have deepened for a bilateral trade package, with a view towards intensifying the economic partnership" between the United States and Brazil. However, the fact that a petitioner is qualified for and may accept a position in an industry or sector that is the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. The Petitioner must still demonstrate the potential prospective impact of his specific endeavor in that area of national importance, and he has not met that burden.

Further, both authors note the job creation and tax revenue figures contained in the Petitioner's business plans, and assert that the proposed endeavor "will positively contribute to the nation's economy through job creation and taxes generated" and "has significant potential to employ U.S. workers." They conclude that the Petitioner's work "has both substantial merit and national importance" for the United States. Although the authors briefly address the Petitioner's business

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[4] The Petitioner's initial documentation, response to the NOID, and appeal submission also include letters from clients of his law firm in Brazil and his consulting company in [redacted] Florida, praising his legal work in the areas of tax, real estate and business and his consulting services related to the purchase and sale of properties. But the authors of the letters do not address the national importance of his proposed endeavor. In addition, the Petitioner's experience and abilities in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.

[5] The Petitioner also offers new evidence on appeal, including an impact analysis for his proposed business, an expert report from a finance professor at [redacted] University, additional recommendation letters, and a boundary survey for a housing project in [redacted] Florida, an area the Petitioner claims is economically depressed. However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

plans, they do not sufficiently address their prospective substantial economic impact nor do they discuss the implications of the proposed endeavor on the larger field of real estate or financial investment consulting. For example, the professors have not offered sufficient evidence that the Petitioner's investment consulting services through his company would employ a significant population of workers in an economically depressed area, or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letters is lacking in relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.[6]

In addition, the Director considered the Petitioner's business plans and determined that they did not demonstrate that the company's future staffing levels and consulting activity would provide substantial economic benefits in Florida or the United States. The record supports the Director's conclusion. Although the business plans reflect that the company will hire several workers, the record does not contain sufficient evidence to reflect that the area where it will operate is economically depressed, that it would employ a significant population of workers in the area, or that the specific proposed endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue. In this regard, we note that the Petitioner's business plans contain a chart and figures from IBISWorld.com indicating that Florida has 12.2% of total U.S. real estate sales and brokerage industry establishments. The record does not support that the creation of eleven additional jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

The business plans indicate that the Petitioner's company would offer additional economic benefits including enabling foreign direct investment in new or existing U.S. businesses. However, these statements are not supported by financial projections. Although the proposed endeavor may benefit

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[6] We further note that the letter from Professor S-L-M- at [redacted] University School of Law does not provide her own educational background and qualifications, but repeats those contained in the letter from Professor V-L- at [redacted] University. For example, her letter indicates she received a bachelor's degree in engineering from [redacted] Technical University, a master's degree in technology management from [redacted] University of Technology, and a Ph.D. in business administration from [redacted] University, and states "[c]urrently, I am a tenured Associate Professor of Business Administration - Marketing at [redacted] University." Here, these concerns give rise to significant questions regarding the authorship of this letter and whether it reflects the professional opinion of Professor S-L-M-. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Chawathe*, 25 I&N Dec. at 376.

the clients that engage the Petitioner's company, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance.

On appeal, the Petitioner reiterates the importance of the industry or profession, and his role within the proposed company; however, these factors do not sufficiently establish the national importance of the proposed endeavor. The Petitioner likewise reiterates his professional experience and abilities. While important, as noted the Petitioner's expertise acquired through his employment relates 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 the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong.

In light of the above conclusions, the Petitioner has not met his burden of proof to establish that he meets the first prong of the *Dhanasar* national interest framework. Although the Director also concluded that the Petitioner had not established his eligibility under the second and third prongs of the *Dhanasar* framework, detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion.[7]

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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[7] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).