U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28467113

Date: SEP. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a foreign legal consultant, seeks classification as a member of the professions holding an advanced degree. 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. 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 although the Petitioner qualifies for the EB-2 classification, the record did not establish that a waiver of the classification's job offer requirement is 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 immigrant 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, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- 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 Director found that the Petitioner qualifies for the EB-2 classification as an advanced degree professional based upon his bachelor of law degree from Brazil, obtained in 2008, followed by at least five years of progressive work experience as a lawyer in Brazil. The Director also found that the Petitioner established the substantial merit of the proposed endeavor. However, the Director found that the Petitioner did not establish the national importance of the endeavor. The Director did not make a finding in the decision as to the second or third prongs of the *Dhanasar* framework, stating that because the Petitioner did not establish the first prong's national importance requirement, the Petitioner did not demonstrate eligibility for a national interest waiver.[2]

The Petitioner proposes to work as a foreign legal consultant "to provide support and consultancy to American companies that wish to invest in the Brazilian market." The Petitioner states that he will be able to assist with cross-border transactions, compliance with Brazilian law, and legal risk analysis. The Petitioner states that he can also use his experience in mediation and arbitration to assist with disputes that arise for U.S. companies operating in Brazil. The Petitioner states that he may perform this endeavor by being employed with a U.S. employer full-time or by operating his own consulting firm.

In concluding that the Petitioner did not establish national importance, the Director found that the Petitioner had not shown that the impact of the proposed endeavor would reach beyond his clients, or his employer if employed, to influence the field or otherwise be of importance to the nation as a whole. The Director acknowledged the industry reports and articles that the Petitioner submitted but noted that USCIS must examine the prospective impact of the specific endeavor rather than the operation of an entire company or the industry in which the petitioner intends to work. The Director also found that the Petitioner had not demonstrated that the proposed endeavor has the significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

On appeal, the Petitioner asserts that he has demonstrated the national importance of his proposed endeavor because he submitted a personal statement "outlining and detailing his proposed endeavor in the United States, and explaining the national importance" of it, and because he "supported his statements with independent and objective evidence, in the form of industry reports and articles." The Petitioner asserts that this documentation demonstrates that increasing cross-border transactions, as he proposes to do, provides increased labor generation, economic development, and other economic benefits. As to the Director's statement that the relevant question is not the importance of industry

[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).

[2] The Director did state in a request for evidence (RFE) that the record established the second prong, that the Petitioner is well-positioned to advance the proposed endeavor, but this finding was not in the decision.

where the Petitioner will work, but rather the specific proposed endeavor, the Petitioner asserts that he established the specific endeavor that he proposes to undertake by submitting his personal statement and an updated statement in response to the Director's request for evidence (RFE).

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Although the Petitioner characterizes the industry reports and articles as demonstrating his endeavor's national importance, as the Director noted, none of these documents discuss the Petitioner or his proposed endeavor specifically. Rather, these articles and reports relate to job creation, international trade, and the economy in general. We agree with the Director that in considering national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* at 889. The Petitioner did not submit media reports or letters from interested government agencies discussing the Petitioner's specific proposed endeavor and its potential to impact the U.S. economy, job creation, or U.S. trade interests, or the proposed endeavor's potential to have a broad impact on the field of cross-border transactions.

We appreciate the Petitioner's statement that these reports and articles are independent, objective evidence and that they relate to the Petitioner's proposed endeavor. We agree that this type of evidence can be helpful in establishing the potential need for or interest in businesses that offer the types of cross-border or legal consultancy services that the Petitioner proposes. Primarily, however, this speaks to the substantial merit of the proposed endeavor, which we agree with the Director has been established. Additionally, while such evidence could also be a positive factor in determining national importance, it is not, by itself, sufficient for the Petitioner to meet his burden of proof. These documents do not discuss the Petitioner's specific proposed endeavor, and therefore do not help establish that it is of such a scale that it has the potential to have significant positive economic effects, to have a broad impact on the field, or to otherwise rise to the level of national importance. For example, the Petitioner refers to an article from the U.S. Chamber of Commerce that discusses the benefits of international trade and asserts that, because his endeavor will increase international trade, this article establishes his endeavor's national importance. However, the referenced article only discuses this topic in general, and therefore does not help establish that the Petitioner's proposed endeavor has the potential to increase trade at a level that is commensurate with national importance. As such, the industry reports and articles are not sufficient to establish the proposed endeavor's national importance.

The Petitioner attempts to overcome the Director's finding that the articles and reports do not relate to the specific proposed endeavor by asserting that he has sufficiently described his proposed endeavor in his personal statement. On appeal, the Petitioner quotes from his personal statement, in which he writes that his work will be "important for the U.S. economy as a whole," that it will "create jobs and stimulate economic growth in the U.S.," and "lead to a significant reduction in the risk of economic downturns or other challenges." However, the Petitioner's unsupported assertions are not sufficient

to meet his burden of proof, and we agree with the Director that the record lacks sufficient independent evidence to support these assertions.

We acknowledge that the Petitioner intends for his proposed endeavor to provide a significant contribution to the U.S. economy. But we must consider the scope of the specific proposed endeavor, as established by the record. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the record establishes that the Petitioner hopes to assist U.S. companies with doing business in or investing in Brazil, either as an employee or with his own consulting firm. Even if the Petitioner is successful in finding employment or establishing a business and offering consultancy services, the Petitioner has not demonstrated that this would have an impact outside of his individual clients or customers that would rise to the level of national importance.

The Petitioner has not established that his proposed endeavor has national importance, as required by the first prong of the *Dhanasar* analytical framework. Because the Petitioner has not met the requisite first *Dhanasar* prong, we conclude that he has not established that he is eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant is otherwise ineligible).

III. CONCLUSION

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

ORDER: The appeal is dismissed.