U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33607828

Date: SEP. 10, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a general and operations manager, 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 Nebraska 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 pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

Id.

The first prong, 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. *See id.* 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 described the endeavor as a plan "to expand the [Brazilian fried chicken restaurant franchise he co-owns] in the American territory, where it will adopt a new name to represent the Americans." The Petitioner submitted an undated business plan that generally asserts the franchise "intends to differentiate itself in the selection of the product, preparation, cutting, seasoning, serving method, and technology," offering "dishes from Italian and Brazilian cuisine on its menu." The business plan also indicates that the first franchise location will be "in the state of Utah . . . expanding the franchise to other cities and states within a maximum of 3 years." The business plan states that each restaurant would "directly employ an average of 14 to 18 employees" but it does not clarify the work those individuals would perform, the wages the Petitioner would pay those individuals for performing that work, the particular location in Utah where the first restaurant will be located, how many total franchise locations the Petitioner intends to open, the other cities and states in which the unspecified number of additional restaurants would be located, and other details regarding the scope of the proposed endeavor and how the Petitioner plans to accomplish his business goals. We note in particular that the business plan's two-page section titled "Revenue/Wages" omits anticipated revenue, and it summarizes average wages for chief executives and general and operations managers without addressing the wages the Petitioner would pay the "average of 14 to 18 employees" per location the business plan asserts the restaurant franchise would employ.

Instead, the business plan discusses the Petitioner's then-current part-time work for two jobs. First, the business plan generally indicates that the Petitioner had been "working part-time since September 2022 as a manager" at an American restaurant franchise "which currently has 800 franchised units in 26 states of the United States," without clarifying which unit and state in which he works. Second, the business plan asserts that, since May 2022, the Petitioner had been generally "responsible for customer acquisition, marketing activities, financial area, and technical supervision of services" for a company "specialized in Paver and Concrete Sealing, Travertine, and Pressure Washing services." Similar to the Petitioner's part-time restaurant management job, the business plan does not clarify

where his part-time pressure washing services company is located. The business plan asserts, "In 5 months of operation, the company has already generated $106,000.00 in revenue, showing to be an extremely profitable business." However, the business plan does not establish the number of workers the pressure washing services company employs, the wages the company pays those workers, the company's expenses, and other objective details that would support the statement that it is "extremely profitable." Moreover, the business plan does not establish how the Petitioner's part-time work managing a pressure washing services company may be relevant to the proposed endeavor of running a Brazilian fried chicken restaurant franchise. Relatedly, the business plan does not explain whether the Petitioner intends to continue working as part-time managers for the 800-unit franchise chain and the pressure washing services company in addition to operating his own Brazilian fried chicken restaurant franchise.

The business plan also contains information that is unusual for a plan to operate a business, such as information about the Petitioner's academic history and work experiences, and unsupported and generalized assertions regarding business and commerce. We note that, although the Petitioner stated at the time of filing, "I can serve as a coordinator of entrepreneurial education programs for students ranging from elementary to university level," he did not initially assert that his proposed endeavor would entail doing so.

In response to the Director's request for evidence (RFE), the Petitioner stated that he "aims to provide extensive consulting, advisory, and training services, thereby contributing to the growth of small and medium-sized businesses in the United States. This, in turn, is expected to enhance the country's gross domestic product and tax revenue, bolster STEM education, generate employment opportunities, and boost overall earnings." The Petitioner also submitted an updated business plan, dated January 2024, in response to the RFE. In relevant part, the updated business plan asserts that the Petitioner "endeavors to enhance the U.S. economy by providing highly specialized business consulting and training services to individuals and small businesses across the nation." The updated business plan does not provide additional information about the proposed endeavor the Petitioner established at the time of filing the form I-140, Immigrant Petition for Alien Workers, operating a Brazilian fried chicken restaurant franchise in Utah. We note that the updated business plan also provides inconsistent information regarding the Petitioner's part-time work discussed in the original plan. The updated plan indicates that the Petitioner began working part-time for the American restaurant franchise "since September 2023," not "since September 2022," as the first business plan indicates, and that he managed the power washing services company "April 2022 to September 2023," not beginning in May 2022, as the first business plan indicates.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The Petitioner's statements in response to the Director's RFE that the proposed endeavor would entail operating a consulting and training services company, apparently instead of operating a Brazilian fried chicken restaurant franchise in Utah, presents a new set of facts that did not exist at the time of filing

the Form I-140. Whether the proposed endeavor would entail operating a Brazilian fried chicken restaurant franchise in Utah or a consulting and training services company is material to whether the proposed endeavor may have national importance because it addresses the nature and scope of the proposed endeavor. Because the Petitioner's statements in response to the RFE regarding operating a consulting and training services company present a new set of facts that did not exist at the time of filing the Form I-140, they cannot—and do not—establish eligibility, and we need not address them further. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

The Director concluded that the record establishes the proposed endeavor has substantial merit, as required in part by the first *Dhanasar* prong. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. However, the Director concluded that the record does not establish how the proposed endeavor may have national importance, also required by the first *Dhanasar* prong. *See id.* In particular, the Director observed that the record does not establish "the scope of the intended business [the Petitioner plans] to establish." More specifically, the Director noted that the business plan the Petitioner submitted "discusses various general business facts and highlights there is a high demand for individuals like him and his profession in the United States," but that the record does not establish how the proposed endeavor "stands to impact the broader field or otherwise have implications rising to the level of national importance." The Director further concluded that the record does not satisfy the second or third *Dhanasar* prongs. *See id.* at 888-91.

On appeal, the Petitioner generally reasserts that his "proposed initiative holds paramount national importance" because it will "facilitate the advancement of small and medium-sized enterprises in the country[,] amplify the nation's gross domestic product and tax earnings, fortify STEM education, create job prospects, and elevate overall income levels." The Petitioner further references on appeal information he submitted in response to the Director's RFE, which cannot and does not establish eligibility for the reasons discussed above. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. The Petitioner does not address on appeal how the proposed endeavor he established at the time of filing the Form I-140, operating a Brazilian fried chicken restaurant franchise in Utah, may have national importance.

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" and "we consider its potential prospective impact," looking for "broader implications." *Matter of 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" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The record does not establish how the potential prospective impact of the proposed endeavor established at the time of filing the Form I-140—operating a Brazilian fried chicken restaurant franchise in some unstated location in Utah—may have the type of broader implications indicative of national importance. *See id.* Although the Petitioner's original, undated business plan asserts his Brazilian fried chicken restaurant franchise "intends to differentiate itself in the selection of the

product, preparation, cutting, seasoning, serving method, and technology," offering "dishes from Italian and Brazilian cuisine on its menu," the record does not establish how these generalized differentiations may have national or even global implications within the culinary field—or any other field—such as those resulting from certain improved manufacturing processes or medical advances. *See id.* We take administrative notice that restaurants commonly differentiate themselves somehow through selection of product, preparation, cutting, seasoning, serving method, and technology, or else meals would tend to look and taste indistinguishable across the industry. In turn, as noted above, although the business plan indicates that the Petitioner's Brazilian fried chicken restaurant franchise would "directly employ an average of 14 to 18 employees" in some unspecified location in Utah, it does not clarify the work those individuals would perform, the wages the Petitioner would pay those individuals for performing that work, the particular location in Utah where the first restaurant will be located, how many total franchise locations the Petitioner intends to open, the other cities and states in which the unspecified number of additional restaurants would be located, and other details regarding the proposed endeavor. Therefore, the record does not establish how the proposed endeavor may have significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. *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) (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 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.