U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33386110

Date: SEPT. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a person with expertise in paintless dent repair (PDR) who intends to work as a micro restoration specialist in the automotive field, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. See Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 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. Id.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner demonstrated his qualifications for the EB-2 category but did not demonstrate he merits a national interest waiver. On appeal, the Petitioner resubmitted and referred to the evidence and arguments previously presented with the initial application and request for evidence "for further analysis, within its details, and reconsideration."

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, see *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record does not support a national interest waiver because the Petitioner has not established the claimed "national importance" of his proposed U.S. venture. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must demonstrate their qualifications for the EB-2 category, either as members of the professions holding an "advanced degree" or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this immigrant visa category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ the individuals in the country. See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016).

II. ANALYSIS

A. The Petitioner meets the EB-2 requirement, and his proposed endeavor has substantial merit.

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also determined that the Petitioner had established that the proposed endeavor met the substantial merit portion of the first prong set forth in the Dhanasar analytical framework. The Director's decision then provided a well-reasoned explanation as to why he does not merit a national interest waiver.

B. The proposed endeavor does not have national importance

Rather than address the Director's conclusions on appeal, the Petitioner generally discusses the importance of his field and provides conclusory statements that his proposed endeavor is of national importance. In Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. See Dhanasar, 26 I&N Dec. at 893. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clients and persons who learn the PDR technique to impact the field of PDR more broadly at a level commensurate with national importance. Nor has he shown that the particular work he proposes to undertake offers original innovations that contribute to advancements or otherwise has broader implications for his field.[1]

Furthermore, the Petitioner has not demonstrated that his specific endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." Matter of Dhanasar, 26 I&N Dec. at 889. "An 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. A nationally important venture may even focus on only one geographic area of the United States. Id. at 889-90. "An endeavor that has significant

[1] The Petitioner's statement states that he studied PDR with the best instructors and worked hard to master the established technique.

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.

We agree with the Director that the Petitioner has not demonstrated the potential impact of his proposed endeavor beyond his business, employees, clients, and trainees. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

Therefore, upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director's decision regarding national importance. See Matter of P. Singh, Attorney, 26 I&N Dec. 623 (BIA 2015) (citing Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Chen v. INS, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding the remaining issues. 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 he has not established that 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.