U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30644119

Date: APR. 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial engineer, 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 EB-2 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 qualifies for classification as a member of the professions holding an advanced degree, but did not establish 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either a member of the professions holding an advanced degree 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 for the underlying EB-2 classification, 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, 889 (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, grant a national interest waiver if the petitioner demonstrates that:[1]

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree and the record supports that determination. The remaining issue 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 Director determined that the Petitioner established the substantial merit of his proposed endeavor and that he is well-positioned to advance it. However, the Director concluded he did not establish the proposed endeavor's national importance and that, on balance, it would benefit the United States to waive the job offer requirement. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. While we do not discuss each piece of evidence individually, we have considered all relevant evidence in reaching this determination.

A. Proposed Endeavor

At the time of filing, the Petitioner provided evidence of his academic qualifications in industrial engineering, production, and international logistics. His resume highlights his professional experience in various fields. Most recently, he worked as a crew control analyst and operational services coordinator for a Colombian airline, from 2014 until 2022. In an accompanying "professional biography," the Petitioner stated that he "could contribute positively and significant[ly] not only in the aviation sector but in any productive and operational sector." However, other than identifying his intended occupation as "industrial engineer," he did not further discuss his intentions or identify the specific proposed endeavor he plans to undertake in the United States.

In response to a request for evidence, the Petitioner submitted a "business plan" indicating that he intends "to provide world-class process improvement and business consulting services to companies of all sizes, operating in various industries, that need assistance in achieving growth, increasing efficiency and profitability, and improving internal processes." The plan indicates he would primarily focus on the aviation industry, "but will also provide consulting services to companies operating in other sectors like retail, food production and manufacturing." The Petitioner clarified he would initially seek employment in one of these "target sectors" and would start providing services as an independent consultant after gaining recognition for his process improvement work. The submitted plan includes a market overview of the management consulting industry and seeks to explain the need for the Petitioner's services in the airline transportation and manufacturing sectors, and his potential contributions to the United States.

Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

B. Substantial Merit and National Importance

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.

In the decision denying the petition, the Director concluded that the evidence was sufficient to show that the Petitioner's proposed endeavor is of substantial merit. The Petitioner submitted evidence regarding the management consulting industry, challenges facing the U.S. airline and manufacturing industries, and the importance of small businesses to the U.S. economy. We agree that the Petitioner's plan to offer consulting services to these targeted industries through his own business has substantial merit.

Turning to the national importance of the Petitioner's proposed endeavor, the Director determined that the Petitioner had not established how his proposed consulting business would have broader implications, either in the consulting field or in the industries he intends to serve as an independent consultant. The Director further concluded that the Petitioner did not establish how his proposed endeavor would have substantial economic impacts commensurate with national importance.

On appeal, the Petitioner submits additional evidence and repeats his previous claim that, by working as a business consultant specializing in process improvement, he will increase operational efficiencies across various industries, with direct impacts on industries that are considered nationally important including airline transportation, manufacturing, and small business enterprises. The Petitioner also stresses that because he will be starting his own company, the direct and indirect economic impact of his work will not be limited to a single employer and its clients. Finally, he emphasizes that his proposed services to the manufacturing industry are in a STEM area that the U.S. government has identified as being important to U.S. competitiveness and should be weighed favorably based on guidance provided in the *USCIS Policy Manual*.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. Whether a proposed endeavor has national importance depends on its "potential prospective impact." Endeavors with national or global implications within a particular field - such as those introducing improved manufacturing processes or medical advances - may have national importance. *Id.* Further "[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. We will also consider factors such as whether there is evidence that a proposed endeavor has the potential to broadly enhance societal welfare or whether it impacts a matter that a government entity has described as having national importance or is the subject of national initiatives.

The Petitioner claims that his proposed endeavor will have substantial positive economic effects that will be direct, based on his plans to start his own consulting business, as well as indirect effects, based

on the positive impact he will have on clients that rely on his consulting services. Although the Petitioner submitted a document he characterizes as a "business plan," it does not include any projections related to his future business' potential for job creation and revenue. For example, despite stating that his endeavor stands to generate direct and indirect jobs for U.S. workers, the business plan does not identify the number or types of jobs that will be created, the location of these jobs, the wages of these workers, or other details. Further, he does not state that he will operate his business in an economically depressed area. Therefore, while the Petitioner generally suggests that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*, based on employment levels, tax revenue, or business activity. 26 I&N Dec. at 890.

Rather, most of the Petitioner's claims regarding the potential economic effects of his proposed endeavor relate to the broad economic impact of the industries in which he intends to provide consulting services. For example, he emphasizes that management consulting is a growing industry with $329.9 billion in revenue in 2023, that the air transport industry accounts for 4.2 percent of the United States GDP, that small business enterprises are "the backbone of the U.S. economy," and that manufacturing is a leading industry in terms of direct and indirect job creation. The Petitioner maintains that his proposed consulting work with clients in these industries will result in cost savings and increased productivity and efficiency, with "ripple effects" that lead to increased revenue and overall growth. He therefore claims his work will contribute, albeit indirectly, to "a healthier business ecosystem," and increase the amount of tax revenue available to provide public services for the benefit of all Americans.

The record supports that the air transport, manufacturing, and consulting industries are important to the U.S. economy. However, the burden is on the Petitioner to establish that the economic effects of his specific proposed endeavor are "substantial"; he cannot rely on industry-wide economic data to meet the national importance element of *Dhanasar*'s first prong. He did not provide specific plans, projections, or calculations in support of his broad claims regarding the potential indirect economic effects of his proposed endeavor. Nor did he otherwise provide an evidentiary basis to demonstrate that his work will, for example, result in a "healthier business ecosystem" in the United States. While any business activity has the potential to positively impact the economy, the record does not demonstrate how the Petitioner's independent consulting business could generate such significant indirect economic activity that it would rise to the level of "substantial positive economic effects." *Dhanasar*, 26 I&N Dec. at 890.

The Petitioner generally indicates that he will be able to optimize and automate certain internal processes for clients in various industries, but he does not claim, for example, that he intends to introduce innovative methods or novel advancements that would have potential industry-wide implications. In *Dhanasar*, the noncitizen's work as a science teacher was found to have substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Dhanasar*, 26 I&N Dec. at 893. Here, the record similarly does not establish that the Petitioner's proposed endeavor to work as an independent consultant will for example, decrease the incidence of flight delays among U.S. airlines, improve U.S. manufacturing practices, or advance the management consulting industry at a scale that is commensurate with national importance. As noted, the Petitioner's business plan offers little insight

into the anticipated size and scope of his future consulting business, and overall, the record does not support his claim that he is poised to have a "profound impact" on multiple industries and the health of the U.S. economy.

As an example of his proposed endeavor's potential impact, the Petitioner submits a letter from a prospective U.S. client that assembles, prepares, and manages food stands at large festivals and events. The potential client indicates its interest in retaining the Petitioner's consulting services to "further grow our company, improve our internal processes, and increase our efficiency and profitability." The letter mentions the Petitioner's "unique and tailored approach" noting that he will be analyzing their existing processes and implementing methods designed to improve the company's performance. Neither this letter nor other evidence in the record elaborates on the Petitioner's "unique" approach to management consulting or optimizing internal processes; in fact, he has not previously worked as a consultant or worked in this prospective client's industry.

Although the Petitioner places considerable emphasis on the importance of the consulting services he intends to provide to the air transport and manufacturing industries, he has not identified any potential clients in those sectors. As noted, although the Petitioner submitted a plan for his proposed endeavor, it offers no information about the number or types of clients he could potentially and realistically target as an independent consultant. Therefore, he has not established that his work as an independent consultant is more likely than not to impact one of these targeted industries, or any other industry, on a level with implications that rise to the level of national importance. *Matter of Chawathe*, 19 I&N Dec. at 376 (explaining that the "preponderance of the evidence" standard requires petitioners to submit relevant, probative, and credible evidence to show the fact to be proven is "probably" true).

The Petitioner claims on appeal that his proposal to offer consulting services to clients in the manufacturing sector would be of national importance in promoting U.S. competitiveness in a STEM field. He emphasizes that "economic resilience" in manufacturing was highlighted in the Memorandum on Research and Development Priorities for President Biden's 2022 budget, issued jointly by the Directors of the Office of Science and Technology Policy and Office of Management and Budget. The memorandum states that "investments in economic resilience should emphasize technologies that ensure safe, clean and reliable access to critical products, materials and minerals, including new manufacturing and biomanufacturing processes that can cost-effectively produce key goods on demand."

USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies, or other STEM areas important to U.S. competitiveness or national security. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual. With respect to the first prong of the *Dhanasar* framework, we acknowledge that proposed endeavors that aim to advance STEM technologies and research not only have substantial merit in relation to U.S. science and technology interests but may also have sufficiently broad potential implications to demonstrate national importance. The Petitioner's proposed endeavor, as described in the record, does not clearly involve the research and advancement of STEM technologies. The Petitioner, whose employment history does not include specific experience in product manufacturing, indicates that he intends to eventually work as an independent consultant and, in this capacity, *may* serve clients in the manufacturing sector. However, he does not sufficiently articulate how the scope of his work as an

independent consultant would meaningfully contribute to and have broad implications for U.S. technology leadership and competitiveness in manufacturing. For these reasons, the Petitioner did not demonstrate the national importance of his proposed endeavor based on its potential connection to a STEM field.

Finally, to illustrate the potential impact of his proposed endeavor, the Petitioner points to his academic and professional qualifications and his past employment experience, with an emphasis on his prior work in the air transport industry. We reviewed his statements and several reference letters from his prior employers and business contacts. The authors of the letters praise the Petitioner's expertise, professionalism, personal attributes, and past achievements. However, they do not discuss his specific proposed endeavor or speak to the potential broader implications of his work. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*. Furthermore, we note that the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of his proposed endeavor.

For the reasons stated above, we conclude that the Petitioner has not shown that his proposed has national importance, and he therefore has not met the first prong of the *Dhanasar* analytical framework.

A petitioner must meet all three prongs of the *Dhanasar* analytical framework to establish eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve discussion of *Dhanasar*'s second and third 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 an applicant is otherwise ineligible).

III. CONCLUSION

Because 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.