U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30663114

Date: APR. 3, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computer user support specialist, seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. *See* 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, 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.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability; however, the Director did not address whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. The Director also concluded 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. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of*

Dhanasar, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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 Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability; however, the Director did not address whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act. The Petitioner specifically stated at the time of filing the Form I-140, Immigrant Petition for Alien Workers, that he "firmly meets the requirements of both occupational categories [addressed at section 203(b)(2) of the Act]." Although the Director concluded that the record establishes that the Petitioner has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning and that the Petitioner has at least 10 years of full-time experience in the occupation, as contemplated by the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(B), the Director did not address whether this evidence satisfies the advanced degree equivalency criteria at 8 C.F.R. § 204.5(k)(3)(i)(B), implementing section 203(b)(2) of the Act. Furthermore, the record does not clarify why the Director addressed whether the Petitioner may qualify for a national interest waiver if he was ineligible for second-preference classification, as the Director concluded.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* section 203(b)(2) of the Act; *see also 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"); *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).

The Petitioner described the endeavor as a plan "to advance his career as an IT [s]pecialist . . . to small and large businesses belonging to both the private and public sectors in the United States." The Director sent a request for evidence (RFE), to elicit details about the specific endeavor the Petitioner proposes to pursue. However, similar to the information the Petitioner submitted at the time of filing the Form I-140, the Petitioner's RFE response focused on generalized information regarding information technology and business, without elaborating on the specific endeavor he proposes to undertake and how it may have national importance.

The Director acknowledged the generalized information the Petitioner submitted; however, the Director also noted that the record "focuses on the industry rather than how the [Petitioner's] specific proposed endeavor brings benefits to the economy or job creation." The Director specifically noted that "no documentary evidence was submitted that demonstrates how the [Petitioner's] work as a single IT specialist would make substantial positive economic effects or how [his] work would hire U.S. workers." The Director further noted that the Petitioner "has not established that [his] proposed endeavor in the United States will have a broader impact on the field outside of [his] prospective company and/or clients." Ultimately, the Director concluded that the record does not establish whether the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. The Director also concluded that the record does not satisfy the third *Dhanasar* prong; however, the Director determined that the proposed endeavor has substantial merit, as required by the first *Dhanasar* prong, and that the Petitioner is well positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

On appeal, the Petitioner reiterates generalized information regarding information technology and business, and he asserts that the generalized information establishes that his proposed endeavor has national importance. The Petitioner also reasserts that "the Biden-Harris Administration has prioritized economic recovery and the role of advanced STEM degrees aligns with the national interest." The Petitioner further reasserts that generalized information regarding labor shortages in the information technology industry "emphasizes the importance of the field but also underscores the national significance of the Petitioner's endeavor in filling this gap."

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." *See 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" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's discussion of generalized information regarding information technology and business relate to the merit and importance of the industry, field, or profession in which he will work; however, as noted above, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* at 889. The various publications in the record, referenced by the Petitioner on appeal, do not discuss the Petitioner, the specific endeavor he proposes to undertake, and how the specific endeavor the Petitioner proposes to undertake may have "national or even global implications within a particular field" or otherwise have broader implications beyond his current or potential employer(s), customers, or clients. *Id.* at 889-90. Therefore, the referenced publications and generalized information regarding information technology and business do not inform whether the proposed endeavor may have national importance. *See id.*

Next, contrary to the Petitioner's assertions on appeal, whether a petitioner qualifies as a member of the professions with an advanced degree in science, technology, engineering, or mathematics (STEM) does not affect the analysis of whether a proposed endeavor may have national importance. In all

national interest waiver cases, the record must establish that a proposed endeavor—STEM-based or otherwise—has both substantial merit and national importance. *See generally* 6 *USCIS Policy Manual* 5(D)(2), https://www.uscis.gov/policy-manual. As addressed above, to assess national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. The *Dhanasar* framework considers whether a proposed endeavor may have "national or even global implications within a particular field," not merely whether a proposed endeavor may be in a particular field. *Id.* at 889-90.

Next, the Petitioner's discussion of a labor shortage in information technology positions does not establish whether the proposed endeavor may have national importance. The record does not clarify how the proposed endeavor of the Petitioner filling one vacant position at a time, at one unspecified, small or large business in the public or private sector, in some unspecified location, "to advance his career as an IT [s]pecialist" may have the type of broader implications contemplated by the first *Dhanasar* prong, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The proposed endeavor—as described in the record—appears to benefit the Petitioner, whose career will be advanced, any current or potential employer(s) of the Petitioner, and his employer's clients and customers. However, the record does not establish how the Petitioner's proposed endeavor "to advance his career as an IT [s]pecialist" may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *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. *See id.* We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

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.