U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30626931

Date: APR. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer/entrepreneur, 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 Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the Dhanasar framework. See Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining Dhanasar prongs.[1]

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 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. Next, a petitioner 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

[1] 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). We note that the Director stated in a Request for Evidence that the endeavor had substantial merit. We agree with that determination.

regulations define the term "national interest," Matter of Dhanasar, 26 I&N Dec. at 889, provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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 determined that the Petitioner was a member of the professions holding an advanced degree.[3] The remaining issue to be resolved is whether the Petitioner qualifies for a national interest waiver under the Dhanasar framework.

The Petitioner states that his proposed endeavor is to be a software developer/entrepreneur. He claims to have more than 18 years of experience in the information technology (IT) field. At filing, he was employed at a consulting firm as a "project delivery specialist senior" in Tennessee. In a document titled "Definitive Statement," the Petitioner asserts that he intends "to continue using [his] expertise and knowledge to work as a Software Developer / Entrepreneur." He states that he will contribute to the U.S. economy "by developing and expanding [his] company in IT (information technology) [redacted] an IT Consulting Services firm."

With the initial filing, the Petitioner submitted a cover letter, an ETA Form 750 Part B (in duplicate), a "definitive statement," evidence of his experience and education, a business plan, evidence of his business, employment letters, recommendation letters, an award, membership information, and industry reports and articles.

Following initial review, the Director issued a request for evidence (RFE), permitting the Petitioner an opportunity to submit supplemental evidence in attempt to establish his eligibility for a national interest waiver. The Petitioner's response to the RFE includes a cover letter, company information, various certificates, a personal financial statement, a banking statement, recommendation letters, articles and industry reports.

After reviewing the Petitioner's response, the Director concluded that the Petitioner had not submitted evidence that demonstrated that his proposed endeavor was of national importance, that he was well-positioned to advance his endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

With regards to the national importance component of the first prong of the Dhanasar analytical framework, the Director concluded that the Petitioner had not submitted sufficient evidence to

[2] See also 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 to be discretionary in nature).

[3] The record shows that the Petitioner holds the equivalent of a U.S. bachelor's degree awarded in 2010, followed by more than five years of progressive experience in the field. See 8 C.F.R. § 204.5(k)(3)(i)(B).

demonstrate that his proposed endeavor will have broader implications within the IT field, has a significant potential to employ U.S. workers, will have substantial positive economic effects, particularly in an economically depressed area, or will broadly enhance societal welfare, or enhance cultural enrichment.

On appeal, the Petitioner submits a letter brief and argues that the Director "erroneously denied the I-140 Immigrant Petition for Alien Worker" by imposing "novel substantive and evidentiary requirements." Moreover, the Petitioner contends that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law." Finally, the Petitioner argues that the Director "did not give due regard" to specific pieces of evidence including the Petitioner's resume, "Professional Plan," evidence of work in the field, recommendation letters, and industry reports and articles.[4]

Related to the Petitioner's assertion that the Director imposed a novel standard of proof and did not consider the evidence objectively, the Petitioner does not identify the Director's novel standard or describe how it differs from a preponderance of the evidence. We agree with the Petitioner that the preponderance of the evidence standard governs this case, which we conclude the Director correctly applied in this matter. See Matter of Chawathe, 25 I&N Dec. at 375-76.

Regarding the question of 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: 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 has other substantial positive economic effects, particularly in an economically depressed area." Id. at 889-90.

Preliminarily, the Petitioner asserts that the Director made a "critical procedural error" by stating that the Petitioner had submitted a "Business Plan" while the Petitioner "actually submitted a professional plan." This alleged error, according to the Petitioner, "constitutes a significant mistake in the evaluation process" and "undermines the integrity of the decision-making process." While it is true the Director's decision makes reference to a "business plan," such reference is synonymous with a professional plan. This claimed error if it existed, was at most harmless. See generally Matter of O-R-E-, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). However, a review of the evidence in the record shows that the Petitioner, in fact, submitted a "Business Plan" and that prior counsel referred to the "Business Plan" in her cover letter. Therefore, this argument lacks merit. Further, the Director concluded that the business plan submitted did not provide a sufficiently detailed description of the proposed endeavor and why it is of national importance. Other than the claimed "critical procedural error" noted above, the Petitioner does not address the Director's conclusion that his business plan was not sufficiently detailed.

[4] Because we resolve this appeal on the national importance component of the first prong of the Dhanasar analytical framework, we do not address the Petitioner's resume, work evidence, and letters of recommendation. That evidence goes to the Petitioner's eligibility under the second prong of the Dhanasar framework. Regarding the industry reports and articles, these are general in nature and do not detail how the Petitioner's proposed endeavor in particular is of national importance.

The Petitioner asserts that his proposed endeavor will "contribute to the U.S. economy by developing and expanding [his] company in IT." The Petitioner's company will "focus on System Integration Services" besides offering an array of other services. According to the "Business Plan," the Petitioner's company will "help clients with services to build and tailor applications to fit the needs of [sic] client's business."

The Director concluded that the Petitioner did not provide a detailed description of his proposed endeavor and did not sufficiently explain why it is of national importance. Further, the Director concluded that the Petitioner had not demonstrated how his specific work in the field of IT as a software developer/entrepreneur will positively impact the U.S. economy. The Director pointed out that the Petitioner had not shown how he would, as one person, trigger substantial positive economic impacts.

On appeal, the Petitioner argues that his proposed endeavor would "enhance business efficiency, boost productivity, and enhance competitiveness." The Petitioner asserts that those outcomes are "intrinsically tied to job creation and economic growth." Further, the Petitioner states this his proposed endeavor is in "alignment" with "ongoing industry trends and demands" which "substantiates the national importance of the endeavor."

The Petitioner's arguments on appeal rely on generalities and do not substantiate how the Petitioner will effectuate the outcomes he envisions. For instance, the Petitioner's "Business Plan" states that "[his company] will be an IT consulting company." The Plan further states that the Petitioner "combines the best skills to implement the endeavor proposed at [his company]." From the evidence submitted, it is not clear the Petitioner's proposed endeavor will extend benefits beyond his own company and specific clients served. However, even though the "Business Plan" spans over forty pages, the plan does not sufficiently demonstrate how the endeavor will have broader implications, substantial positive economic effects, a significant potential to employ U.S. workers, or how it will enhance societal welfare. The endeavor may "provide cloud and infrastructure..., application development and Integration to develop new application [sic], customize and modernize existing applications" and more services. However, the "Business Plan" does not substantiate how the endeavor will produce the claimed $7,906,000 in revenue during the first five years of operation or how it will create 39 direct and 163 indirect jobs for U.S. workers.

The Petitioner asserts that his proposed endeavor is of national importance "as not only will [the Petitioner] enhance U.S. business and economic capabilities, but he will also fill a gap in the specialized, and highly selective, field of technology." Yet, the Petitioner does not explain how filling "a gap" will have a broader impact on the field beyond his company and his company's customers. In the same way that the teaching activities proposed by the petitioner in Dhanasar were not shown to have a broader impact on the field of STEM education, here the Petitioner has not demonstrated that his proposed endeavor would have broader implications in the field of IT on the U.S. economy beyond the companies benefiting from the Petitioner's services. Matter of Dhanasar, 26 I&N Dec. at 893.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the Dhanasar framework, he is not eligible for a national interest waiver and further discussion of the second and third prongs would serve no meaningful purpose. As noted above, we

reserve the Petitioner's appellate arguments regarding the remaining Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.

ORDER: The appeal is dismissed.