U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33070339

Date: AUGUST 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, 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 the Petitioner did not qualify for EB-2 classification and 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. 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 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 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,[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

- 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.

II. ANALYSIS

In his professional plan and statement submitted in response to the Director's request for evidence, the Petitioner states he intends to work as a full-stack software developer for American financial institutions to modernize activities, reduce environmental impacts, improve operational productivity, increase revenue, and expand business growth through the implementation of modern software solutions.

A. EB-2 Classification

The Director determined the Petitioner was not eligible for EB-2 classification as a member of the professions holding an advanced degree or an individual of exceptional ability. As the Petitioner is not eligible for a national interest waiver for the reasons discussed below, we do not reach and hereby reserve our determination of his eligibility for EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

B. National Interest Waiver: Substantial Merit and National Importance

The first prong in the *Dhanasar* analytical framework for evaluating national interest waivers is substantial merit and national importance. *Dhanasar*, 26 I&N Dec. at 889. This prong focuses on the specific endeavor that the individual proposes to undertake. *Id.* The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner did not establish the substantial merit of his proposed endeavor. We disagree. The Petitioner sufficiently described his proposed endeavor and submitted evidence of the importance of financial technology in the United States. The Petitioner has established that his proposed endeavor has substantial merit.

The Director also concluded the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or other broader implications indicating national importance. *Id.* at 889-90. The Director determined

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

the Petitioner did not establish his proposed endeavor would impact his field more broadly at a level commensurate with national importance.

On appeal, the Petitioner asserts the Director imposed a standard of proof stricter than preponderance of the evidence and "erroneously applied the law." The Petitioner does not specify what standard of proof the Director applied and what portions of the Director's decision show she applied a stricter standard. The Petitioner also does not identify what law the Director erroneously applied and what portions of the Director's decision were incorrect. De novo review of the record shows no error in the Director's determination regarding national importance.

The Petitioner further asserts his proposed endeavor has national importance because it "aims to help [information technology] IT system of financial institutions, which is considered critical and emerging technology by the White House." The Petitioner submitted a copy of the 2022 Critical and Emerging Technologies List Update report of the National Science and Technology Council, which includes financial technologies. The Petitioner also submitted a summary of the Executive Order on Improving the Nation's Cybersecurity. However, our assessment of national importance does not focus on the importance of a field, but rather "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not shown that his proposed endeavor would extend beyond his potential employer or clients to impact the field of financial technologies more broadly. *See id.* (explaining "we look for broader implications").

The Petitioner claims he submitted evidence establishing the national importance of his proposed endeavor. In addition to his business plan and statement, the Petitioner submitted letters from colleagues who praise his professional achievements, but do not discuss his specific proposed endeavor. For example, V-D-S-[2] describes the Petitioner's successful development of software for [redacted] and states the Petitioner is "capable of performing masterly" the work of a full-stack software developer for U.S. financial institutions. R-E-M-M- praises the Petitioner's work at [redacted] and affirms he will be "a valuable professional for US Financial Institutions." M-L-C-O- praises the Petitioner's successful work at [redacted] and expresses confidence that he will be "a prime addition to the IT sector of any company that hires his services." B-Y-A- also commends the Petitioner's accomplishments at [redacted] and states he is "more than qualified" to work as a full-stack software developer for American financial institutions. While these authors commend the Petitioner's past work and express confidence in his ability to succeed in his profession in the United States, they do not specifically address the Petitioner's proposed endeavor and any impact it would have on the financial technology field.

The Petitioner also submitted a letter from Professor B-D-W-, Professor of Computer Science, Information Systems and Cyber Security at [redacted], expressing his opinion that the Petitioner qualifies for a national interest waiver. B-D-W- lists the benefits of software development and discusses the importance of financial technology, digital transformation, and the IT consulting industry. He concludes the Petitioner's proposed endeavor has significant potential to employ U.S. workers, other substantial positive economic effects, and will broadly enhance societal welfare. Apart from working with financial technology, digital transformation and in the IT consulting industry, B-

[2] We use initials to protect the privacy of referenced individuals.

D-W- does not specify how the Petitioner's work would extend beyond his prospective employer or clients to have substantial economic effects and enhance societal welfare.

B-D-W- also states the Petitioner's proposed endeavor is aligned with federal science, technology, engineering, and mathematics (STEM) initiatives. The Petitioner submitted a fact sheet on the Biden-Harris Administration Actions to Attract STEM Talent and Strengthen our Economy and Competitiveness. We recognize the importance of progress in STEM fields and the essential role that individuals with STEM degrees have in fostering such progress. 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual/. However, "in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance." *Id.* Beyond working in a STEM field, B-D-W- does not establish the potential prospective impact of the Petitioner's proposed endeavor. *Cf. Dhanasar*, 26 I&N Dec. at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

The Petitioner also submitted articles on the U.S. IT consulting market and financial technology. Again, our determination of national importance does not focus on the importance of a field, but rather "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Neither of the articles mention the Petitioner or discuss the potential prospective impact of his proposed endeavor on the IT consulting market and financial technology. *See id.* (explaining we consider the proposed endeavor's potential prospective impact when assessing 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. *Id.* at 893. Here, the Petitioner has not established that his proposed endeavor would sufficiently extend beyond his prospective employer or clients to impact his field more broadly at a level commensurate with national importance.

In sum, the relevant evidence demonstrates the substantial merit of the Petitioner's proposed work in his field but does not establish the national importance of his specific proposed endeavor. Consequently, he does not meet the first prong of the *Dhanasar* framework.

B. The Remaining *Dhanasar* Prongs

As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.