U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32769067

Date: AUG. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal analyst, 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but 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 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 qualify for the underlying 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 establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 (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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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.

The first prong, 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. *See id.* at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan "to work as a [l]egal [a]nalyst to benefit U.S. companies and individuals in need legal [sic] assistant in matters of corporate law, labor law, and international transactions and negotiations between countries holding different legal systems." The Petitioner summarized his qualifications and prior work experience, and he provided generalized information regarding the legal profession and business. Rather than asserting that he would found his own law firm, the Petitioner asserted that "U.S. law firms and legal departments, operating or planning to operate in Brazil, would benefit from [his] expertise and skills." We also note that the Petitioner did not initially assert that the proposed endeavor would entail providing services to any governmental agencies or organizations.

In response for the Director's request for evidence (RFE), the Petitioner asserted for the first time that he "plan[s] to start a legal tech company specialized in developing [a]rtificial [i]ntelligence tools for law firms to handle repetitive tasks related to the creation of wide variety of legal documents, contracts and policies, among others." The Petitioner also asserted for the first time in response to the RFE that he "plan[s] to offer services to the US Government in cybersecurity." The Petitioner also reiterated his qualifications and prior work experience, and he provided generalized information regarding the legal profession and business. The Petitioner asserted that he intends to take a state bar examination in connection with his endeavor to work as a legal analyst. The Petitioner also summarized his duties for positions held concurrently at [redacted] where he began working in 2022 and 2023, respectively, which we note is after the 2021 filing date for the Form I-140, Immigrant Petition for Alien Workers.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an

effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The Petitioner's references to founding a legal technology company and to providing cybersecurity services to governmental agencies or organizations cannot—and do not—establish eligibility. Whether the Petitioner would found a company or provide services to governmental agencies or organizations are material to the issue of whether the proposed endeavor may have national importance because they address the scope of the endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Because the Petitioner did not assert at the time of filing that he planned to found a legal technology company or to provide cybersecurity services to governmental agencies or organizations, his assertions in response to the Director's RFE regarding those plans present a new set of facts. Because the Petitioner's assertions in response to the RFE regarding founding a legal technology company and providing cybersecurity services to governmental agencies and organizations present a new set of facts that did not exist at the time of filing, they cannot—and do not—establish eligibility for the requested benefit. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

The Director concluded, "The [P]etitioner has not met the first, second, and third prongs" provided in *Matter of Dhanasar*. In relevant part, although the Director asserted that the "proposed endeavor as a [l]egal [a]nalyst has substantial merit," the Director observed that the record does not establish how the "proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients or the individuals the [P]etitioner would serve to impact the industry or field more broadly" and, thus, how the endeavor may have national importance, referencing *Dhanasar*, 26 I&N Dec. at 889-90. The Director acknowledged the Petitioner described his qualifications and prior work experience, and that he submitted generalized information regarding the legal profession and business. However, the Director noted that the record "should focus on the impact of what the [P]etitioner intends to do rather than the [general] occupational classification." Ultimately, the Director concluded that "the [P]etitioner has not established that the proposed endeavor is of national importance."

On appeal, in relevant part, the Petitioner reiterates his qualifications and prior work experience, and he again references generalized information regarding the legal profession and business. The Petitioner also references his work at [redacted]

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" and "we consider its potential prospective impact," looking for "broader implications." *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" or those with "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 his qualifications and prior work experience is material to the second *Dhanasar* prong—whether an individual is well-positioned to advance a proposed endeavor—but it is not material to the issue of whether the prospective impact of the specific endeavor

he proposes to undertake may have broader implications indicative of national importance, as required by the first *Dhanasar* prong. *See id.* at 888-91. In turn, although generalized information regarding the legal profession and business informs how the proposed endeavor may have substantial merit, as required by the first *Dhanasar* prong, the generalized information in the record referenced by the Petitioner on appeal does not address the Petitioner, the specific endeavor he proposes to undertake, and how the proposed endeavor may have national or even global implications within any particular field, such as those resulting from certain improved manufacturing processes or medical advances; significant potential to employ U.S. workers or other substantial positive economic effects; or any other indicia of national importance. *See id.* at 889-90. Therefore, the generalized information regarding the legal profession and business is immaterial to whether the proposed endeavor may have national importance, as contemplated by *Dhanasar*. *See id.*

The proposed endeavor, as described in the record, to the extent that it may establish eligibility, appears "to benefit U.S. companies and individuals in need" of a legal analyst, and potential clients, customers, or business partners of those companies and individuals. However, the record does not establish how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications contemplated by *Dhanasar*. For example, as noted above, the record does not establish how the Petitioner's work as a legal analyst may have national or even global implications in business, the practice of law, or any other particular field, such as those resulting from certain improved manufacturing processes or medical advances, rather than simply providing services to potential clients, customers, or business partners. *See id.* As another example, the record does not establish how the Petitioner's work as a single legal analyst for "U.S. companies and individuals in need" may have significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. *See 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. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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

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.