U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32461363

Date: AUGUST 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information specialist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this classification. 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 establish eligibility as an individual of exceptional ability or for a national interest waiver. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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, 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,[3] 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.

Id.

II. ANALYSIS

A. EB-2 Visa Classification

The Director determined that the Petitioner does not qualify as an individual of exceptional ability. Since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether he qualifies for EB-2 classification as an individual of exceptional ability for future consideration should the need arise.[4]

B. Substantial Merit and National Importance

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Id. at 889. 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. Id. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

We agree with the Director's conclusion that the proposed endeavor has substantial merit as it falls within the above-mentioned range of areas of substantial merit. Therefore, we will first identify the

[3] 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).

[4] 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 alternate issues on appeal where an applicant is otherwise ineligible).

Petitioner's endeavor as shown in the record and then evaluate the Petitioner's evidence in support of the endeavor's national importance.

The Petitioner asserts that his proposed endeavor is to "perform as an IT Specialist and provide my specialized services in web development, database management, DevOps and software design to impact the field of information technology in the U.S." He states that his "endeavor will be performed primarily in [redacted] Florida, however it is not restricted to one geographical location, as I am willing to travel and execute my endeavors throughout the entire country. In this light, I will have the opportunity to engage with and benefit economically distressed areas across different states and regions, contributing to their overall development and growth." He contends that he "will perform beyond the work of ordinary IT specialists, as my endeavor will innovate the field of digital marketing through the implementation of Development Languages and Frameworks, Database and Data Management, Communication, and Middleware, and Business Applications and Integration tools to provide. . .[i]ncreased online visibility and customer engagement for various brands and products; [e]nhanced user experience and satisfaction through responsive and interactive web applications; [i]mproved data security and privacy through encryption and authentication techniques; and [r]educed operational costs and increased efficiency through automation and cloud integration."

In addition, the Petitioner contends that he will "create a new framework to simplify building complex web applications" which "will revolutionize the field of web development" as well as "align with the U.S. Open Government Initiatives, which promote openness, transparency, and public participation." He further contends that he will "develop a new database system that will significantly improve data retrieval speed and storage efficiency;" . . . "introduce a new set of tools and practices for DevOps to streamline the software development and operations process;" and pioneer a modern design methodology in software design that puts user experience at the forefront" which aligns with the United States' promotion of responsible artificial intelligence (AI) innovation. The Petitioner also asserts that "the economic impact of these initiatives will be significant. The web development framework could lead to thousands of new websites and applications, contributing to the software industry's $1.07 trillion value-added GDP. The database system could save companies millions of dollars in storage costs, contributing to economic growth. The DevOps tools and practices could lead to more efficient software development processes, potentially creating new jobs in the tech industry." He further posits that his "endeavor in improving database management and software development processes through innovative technologies and practices is not just a significant step forward in IT efficiency but also a robust catalyst for economic growth and job creation in the United States."

On appeal, the Petitioner asserts that the Director erred by mischaracterizing his "professional plan" as a "business plan" which "led to an erroneous assumption about the nature of the Petitioner's intended activities." He further asserts that "this distinction is crucial as it denotes the Petitioner's intention to operate as an individual IT specialist providing specialized services rather than as a business entity." He also contends that his submitted evidence establishes that the impact of his proposed endeavor extends beyond his employer and its clients and "has national or even global implications" and "has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States."

Here, the Petitioner relies primarily on the positive economic effects of advanced technologies and innovative methodologies to the U.S. economy as well as the alignment of his proposed endeavor

"with several areas listed in the Critical and Emerging Technologies (CETs) . . . part of a broader strategy to maintain U.S. technological competitiveness." We first note here that the Petitioner's experience and abilities in his field relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we also stated that "[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. A local physical therapy business and a shortage of physical therapists in the United States does not render the proposed endeavor nationally important under the Dhanasar framework.

While the Petitioner's professional plan provides a list of information technology initiatives he intends to undertake, the plan does not address how he will introduce and disseminate his various initiatives through his work as a Senior Software Developer and Team Leader beyond his employer – a company that delivers technology solutions for trading firms and brokerages. Further, while he contends that "the economic impact of these initiatives will be significant" and will "save companies millions of dollars," as well as serve as "a robust catalyst for economic growth and job creation in the United States," these projections are not supported by relevant or probative evidence, details showing their basis, or an explanation of how they will be realized, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Generalized conclusory statements that do not identify a specific impact to the field have little probative value.[5] Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. Further, the Petitioner has not demonstrated that his business would benefit an economically depressed area. In the end, the economic benefits that the Petitioner claims will result from his endeavor depend on numerous factors and the Petitioner does not offer a sufficiently direct evidentiary tie between his proposed endeavor and the claimed economic results.

As 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs.

ORDER: The appeal is dismissed.

[5] *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).