U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31109069

Date: AUG. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computer systems networking entrepreneur, 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. *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 the Petitioner qualifies for EB-2 classification and that he is not eligible for a national interest waiver as a matter of discretion. 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

[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.

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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, 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 Classification

The Petitioner asserts on appeal that the Director erroneously determined that he does not qualify for the EB-2 classification as an individual of exceptional ability. The Director concluded that the Petitioner meets three out of the six required criteria; yet the record did not establish he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. Therefore, the Director determined the Petitioner does not qualify for the EB-2 classification as an individual of exceptional ability. However, as the record does not establish by a preponderance of the evidence that the Petitioner is otherwise eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[4]

B. National Interest Waiver

1. Substantial Merit

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. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's proposed endeavor is to be the chief executive officer and sole owner of his own IT consulting business which will support small and medium sized businesses with network infrastructure, cyber security, cloud computing, software provision, and disaster recovery. The record

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

includes information on the Petitioner's proposed endeavor along with articles on government initiatives related to cyber security as well as information related to his field of "advanced computing" listed by USCIS under the "Critical and Emerging Technology Subfields." We conclude that the proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner contends on appeal that the Director did not properly analyze all relevant aspects of the record, "[e]specially its impacts on a matter that a government entity has described as having national importance or is the subject of national initiatives." Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did not demonstrate that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner's focus on appeal is that his proposed endeavor is related to a government initiative and is in the STEM field. Although the Petitioner's proposed endeavor may be related to, "an important national matter, described as so by government entities and subject to national initiatives," and is in the STEM field, the Petitioner must still establish their proposed endeavor has national importance as it is presented in the *Dhanasar* framework. The Petitioner states that his proposed endeavor falls into the "Advanced Computing" category which USCIS' policy manual has identified as a critical and emerging technology field." However, while his proposed endeavor may fall into this category, that alone does not mean his proposed endeavor rises to the level of national importance. The proposed endeavor itself must still meet the level of prospective impact set forth in *Dhanasar*. In addition, the Petitioner contends that his proposed endeavor has national importance because the Biden Administration has made cybersecurity a priority, specifically in strengthening the cyber workforce and attracting STEM talents. The Petitioner states that his expertise falls within the "DHS STEM Designated Degree Program List" under, "Computer Systems Networking and Telecommunications," and that this means, "[t]hat his proposal has the potential to help the U.S. grow and reach its goal of leading the STEM field among the globe." However, as stated above, his proposed endeavor falling into this category does not automatically mean his proposed endeavor will rise to the level of national importance.

For instance, an undertaking may have national importance, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Dhanasar*, 26 I&N Dec. at 889. The record does not establish that the Petitioner's proposed endeavor would have national or global implications within a particular field. The proposed company which will provide IT consulting services to small and medium sized businesses, could have positive implications to its direct clients, however, the record does not establish broader implications within the IT field. The Petitioner states that in addition to his IT consulting, he will also be sharing his knowledge with other professionals by providing IT training for individuals seeking to enter the IT job market. However, 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. Similarly, in this case, the record does not establish that the proposed endeavor will have broad implications in the field beyond his clients and trainees. Therefore,

although the Petitioner asserts that his endeavor is related to a field the U.S. government has prioritized and is in the STEM field, the prospective impact of the proposed endeavor does not rise to the level of national importance.

The Petitioner refers to two of our non-precedent decisions concerning proposed endeavors related to the STEM field. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). However, the non-precedent cases involved publicly disseminated research, and therefore, they would have the potential for broad implications to their prospective fields. *Dhanasar*, 26 I&N Dec. at 889. As discussed above, the record establishes that the Petitioner's proposed endeavor will impact its direct clients, but the record does not establish the proposed endeavor will have broader implications within the field and therefore does not rise to the level of national importance.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on, "the specific endeavor that the foreign national proposes to undertake." *Id.* The Petitioner states:

> [E]ven though some of the evidence refers to the field more broadly, from its analysis it is only logical to infer that a proposed endeavor in that same field, given the level of details brought by the petitioner's *Business Plan*, will have the potential prospective impact, achieving a similar level of national importance such as the one held by the field itself.

While the industry reports and articles in the record establish the U.S. government's interest in industries related to the proposed endeavor and while we recognize the value and importance of the industry, working in the field is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of his proposed endeavor. Although it appears the Petitioner's proposed endeavor does relate to government initiatives, this statement and the record focus on the broader industry's importance and impact, instead of the prospective impact of the Petitioner's specific proposed endeavor. Although the industry reports and articles provide good background information and are evidence of the U.S. government's interest in the industry; without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

It should also be noted that an issue not raised on appeal is waived. *See, e.g.*, *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Therefore, our analysis above focuses on the points the Petitioner has raised on appeal and not the Director's complete decision or any other issues raised in the record. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See 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 met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.