U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32460524

Date: AUG. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 had not established eligibility for 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.

To establish eligibility for a national interest waiver, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

[1] *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's endeavor was explained as follows:

> [U]pon his visa acceptance, [the Petitioner] will work on a consultant capacity through his own registered and filed U.S. company, and he will use his skills to develop IT teams and systems, which will improve U.S. business productivity by allowing companies to maximize their economic capacities in a highly competitive and ever-changing global environment, where technology is a necessity, and IT is linked to economic output and social development. Should his visa be granted, [the Petitioner] will generate significant benefits to the U.S. economy and, therefore, advance the national interest.

On appeal, the Petitioner maintains that he:

> [A]ims to advance his career in the United States as a Chief Executive, a role in which he will make significant contributions to the enhancement and profitability of U.S. businesses engaged in technology and systems management. In this capacity, he is poised to play a crucial role in boosting productivity and streamlining operations within the IT consulting sector, thereby strengthening the United States' position as a leader in technology efficiency.
>
> . . .
>
> The Petitioner's proposed endeavor involving the expansion of [his company] showcases significant potential for substantial economic and social impact. This venture, with planned headquarters in Florida and business units in Georgia and Texas, is poised to make a notable contribution to the U.S. economy and workforce.

As it relates to substantial merit, 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 provided "Industry Reports and Articles" covering various topics, including entrepreneurialism, thereby satisfying the substantial merit of his proposed endeavor.

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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner emphasizes "the essential role played by Chief Executive Officers in the IT consulting sector" and references the "Industrial Reports and Articles" involving broad topics, such as the importance of immigrants and executive roles in the IT and business fields, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of being a Chief Executive in the IT consulting sector.[2] In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even

[2] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

global implications within a particular field." *Id.* 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.* at 890.

The Petitioner states that his "skill set . . . encompassing strategic IT planning, systems optimization, operational efficiency, and a deeper understanding of business process dynamics," "expertise in IT systems optimization and management," "background in sectors like Pharmaceuticals, Electronics, Automotive Parts, Process Industries, and Power Generation," and "profound expertise and extensive experience in IT systems" shows that he is well-suited to drive forward his proposed endeavor. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his role as a Chief Executive in the IT consulting industry largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined 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. The record does not show through supporting documentation how his endeavor sufficiently extends beyond his prospective customers, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

On appeal, the Petitioner reiterates his desire to establish his company "in a HUBZone in [redacted] Florida" demonstrating his "commitment to contributing to economic development in areas that are historically underutilized in business activities." The Petitioner argues that his decision "supports federal economic policies focused on stimulating growth and employment" and a [redacted] Florida location "not only facilitates tapping into local talent but also aligns with the federal effort to create jobs and invigorate economies in diverse regions." However, as the Director correctly noted, the Petitioner did not provide evidence showing that [redacted] Florida is an economically depressed area where the potential creation of 36 jobs would trigger "substantial positive economic effects" as required. Furthermore, the Petitioner's intention to base his company in a Small Business Administration HUBZone is unpersuasive. The HUBZone program's goal is to promote business growth in underutilized business zones with the goal of awarding 3% of federal contract dollars to companies that are HUBZone certified. Joining the HUBZone program makes a business eligible to compete for certain federal contracts in the "set-aside" category. There are several required qualifications to participate in the program, but the most dispositive requirement for purposes of our analysis is that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. We note that the Petitioner's proposed endeavor would be wholly owned and controlled by the Petitioner and that the Petitioner is not a U.S. citizen, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. And to the extent the Petitioner asserts that he would base his company in a HUBZone designated underutilized business zone, the

record does not adequately establish that increased employment in these designated underutilized business zones would have positive economic effects commensurate with national importance. So, the fact that the Petitioner' proposed endeavor may be in a HUBZone is wholly irrelevant to whether the Petitioner's endeavor rose to a level of national importance.

Finally, the Petitioner did not demonstrate how his business plan's claimed employment and tax projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan claims the creation of 36 positions after five years, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to Florida, Georgia and Texas or other anticipated regions or the U.S. economy more broadly at a level commensurate with national importance. While the business plan claims $5.44 million in the projected total payment of wages over five years, and $13.9 million in planned revenue generation in the first five years, the Petitioner did not establish that such figures would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose, as well as a review of the Director's unfavorable determination of the Petitioner's eligibility as an individual of exceptional ability.[3]

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[3] *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 applicants do not otherwise meet their burden of proof).