U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33572442

Date: AUGUST 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) project manager and entrepreneur, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but 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 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

II. ANALYSIS

The Petitioner submitted a business plan for a company that will develop a parking finder mobile application. The Petitioner explains the application will guide drivers to available parking spots in real time, reducing the time and stress associated with finding parking, and will benefit cities and businesses by optimizing parking space usage and reducing traffic congestion and pollution. The Petitioner states the company will be initially located in [redacted], Florida and expand to other cities. The business plan indicates the Petitioner will be the owner and IT project manager of the company.

The Petitioner submitted evidence that he holds the equivalent of a United States bachelor's degree and over five years of progressive experience in IT. The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

A. 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. *Dhanasar*, 26 I&N Dec. at 889. 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 established the substantial merit of his proposed endeavor. We agree.

The Director 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 has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that his proposed endeavor would sufficiently extend beyond an organization and its clients to impact the industry or field more broadly.

On appeal, the Petitioner asserts the Director erred and his app will generate jobs for U.S. workers in underutilized areas, improve the wages and working conditions for U.S. workers, and help the local community bring investments to the region. The Petitioner does not specify what evidence supports these claims. The Petitioner's business plan projects his company will employ 4 other individuals in its first year of operation, increasing to 37 in its fifth year. The plan also projects net income of $154,445 in the first year, increasing to $6,370,165 in the fifth year. The plan does not explain the

basis for these projections but states the smartphone application development industry revenue was estimated to be $176.6 billion in 2023. The business plan does not demonstrate that the company's projected employment and net income indicate significant potential to employ United States workers or other substantial positive economic effects particularly in an industry with estimated revenue of $176.6 billion. *See id.* at 890 (discussing significant potential to employ United States workers and other substantial positive economic effects as indicative of national importance).

The record also does not establish that the Petitioner's company would operate in economically depressed areas. Although the Petitioner's business plan states the company would be located in HUBZones, as the Director explained, the record did not demonstrate that the Petitioner's company would qualify for the HUBZone program. On appeal, the Petitioner does not address this issue.

The Petitioner also claims his expertise and skill set "will support U.S. businesses in developing a competitive edge in both national and international markets." Again, the Petitioner does not identify what evidence supports this claim. It is also unclear what other businesses the Petitioner would be supporting as his proposed endeavor is to own and work for one company that will develop a mobile parking application.

The Petitioner cites industry reports and articles he submitted to show that immigrant entrepreneurs like the Petitioner "play a vital role in the recovery of the U.S. economy and directly contribute to the country's ongoing economic growth." The Petitioner submitted articles on the IT industry, how immigration can contribute to leadership in the IT industry, understanding the gaps in the U.S. science, technology, engineering, and math (STEM) labor market, IT project management, and how international STEM talent is crucial for a robust U.S. economy. We acknowledge the importance of these issues. However, our assessment of national importance does not focus on the importance of issues affecting a field or our nation in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner or address his company and they do not demonstrate the potential prospective impact of his proposed endeavor. *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 record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company's clients to impact his field more broadly in a manner indicative of national importance. *See id.* at 889 (explaining "we look for broader implications").

The Petitioner has not established that his proposed endeavor has significant potential to employ United States workers, would have other substantial positive economic effects, or would otherwise impact his field more broadly in a manner indicative of national importance.

C. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. 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. 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).

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.