U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32881735

Date: AUG. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) professional consultant, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts or business, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner did not qualify for the EB-2 classification and had not established 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.

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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. 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.

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. 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:

- 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. EB-2 CLASSIFICATION

The Petitioner asserted in the record below that he is both an advanced degree professional and an individual of exceptional ability in the sciences, arts, or business, and thereby qualifies for the underlying EB-2 visa classification under section 203(b)(2)(A) of the Act.

The Petitioner asserted before the Director that his academic background and years of progressive professional experience as an IT professional consultant evidence he is a professional who has attained the equivalent of an advanced degree. However, other than claiming to be an advanced degree professional, the Petitioner did not discuss this eligibility ground for EB-2 visa classification in the underlying record and the Director did not analyze this issue. As the Petitioner does not claim on appeal that he is an advanced degree professional or that the Director erred by not analyzing whether he is an advanced degree professional, we consider the issue to be waived. See, e.g., Matter of O-R-E-, 428 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)).

On appeal, the Petitioner claims the Director determined he is an individual of exceptional ability. Our review indicates the Director determined that the Petitioner submitted documentation satisfying at least three of the six categories of evidence under 8 C.F.R. § 204.5(k)(3)(ii) as required for demonstrating exceptional ability. However, the Director ultimately found the Petitioner's evidence in its totality did not show that he is an individual of exceptional ability. As discussed above, meeting at least three criteria, does not, in and of itself, establish eligibility for this classification under section 203(b)(2)(A) of the Act. The Director should have then conducted a final merits determination to decide whether the evidence in its totality shows that the Petitioner is 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, and that he therefore qualifies for the EB-2 classification as an individual of exceptional ability under section 203(b)(2)(A) of the Act. The Director did not conduct a final merits determination. However, as the Petitioner has not demonstrated the national importance of his proposed endeavor, as outlined below and which is dispositive of this

[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).

appeal, we reserve the issue whether he qualifies for EB-2 visa classification as an individual of exceptional ability. 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. NATIONAL INTEREST WAIVER

The Director determined that although the Petitioner established he was an individual well-positioned to advance his proposed endeavor, he did not demonstrate that he merits a discretionary waiver of the job offer requirement "in the national interest" because he did not establish that his proposed endeavor has national importance and that on balance waiving the job offer requirement would benefit the United States under Dhanasar prongs one and two.

The first prong of Dhanasar, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. Matter of 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.

According to the Petitioner's brief, his proposed endeavor is to offer intelligent and innovative IT solutions aiming at supporting many businesses by optimizing processes, reducing costs, increasing productivity, and helping companies operate more efficiently, ultimately contributing to the business markets in the United States. In doing so, the Petitioner intends to provide training on themes related to software development, as well as other subjects of great relevance within the IT arena, to other U.S. professionals, thereby helping the nation enhance its IT workforce. The Director determined the Petitioner established that his proposed endeavor has substantial merit. We agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. 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 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.

In addressing the national importance of his endeavor in his underlying brief, the Petitioner discussed his qualifications and goal of assisting businesses by using his IT skills, and asserted his endeavor has significant potential to employ U.S. workers. In explanation, he provided data on the U.S. technology markets and data evidencing how the IT industry impacts the U.S economy and concluded that his endeavor, by virtue of contributing to the IT industry, would contribute to the U.S. economy. He further asserted that IT professionals play an important role in cybersecurity, and because computerized technology is integrated into every facet of our lives, his endeavor would improve the social and cultural fabric of the United States. He further stated there are a myriad of government initiatives that hold information technology of national importance. The Petitioner submitted several

articles discussing, for example, the role of IT professionals in the U.S. economy, job descriptions of an IT specialist, the future of IT specialists, the evolution of business technology.

In response to the Director's request for evidence (RFE), the Petitioner submitted another brief, a business plan, and additional articles and industry reports. In determining the Petitioner had not established the national importance of his endeavor, the Director acknowledged the Petitioner's business plan and explained the Petitioner did not offer sufficient evidence to demonstrate his business stands to impact the regional or national population at a level consistent with having national importance, his particular business would have broader implications to the IT industry, or his company's contribution would affect national employment levels or the U.S. economy more broadly to reach the level of "substantial positive economic effects" as contemplated by Dhanasar.

On appeal, the Petitioner submits a brief asserting that the Director's decision did not follow USCIS guidance and analyze his evidence as an entrepreneur in determining his eligibility for a national interest waiver. He reasserts his claims of eligibility for a national interest waiver and contends error by the Director, asserting the Director's decision was arbitrary and capricious, contradicted the evidence on record, utilized a novel standard of proof, and denied the Petitioner due process of law. The Petitioner did not provide further explanation for these general assertions of error.

To the extent the Petitioner claims that the Director's decision did not properly apply the Act, its guiding regulations, *Dhanasar's* framework for adjudicating national interest waiver petitions, and our own policy guidance, we disagree. Our review indicates the Director properly considered the petition and relevant evidence under the applicable preponderance of the evidence standard and provided sufficient reasoning in concluding that the Petitioner had not met his burden to establish the national importance of his proposed endeavor, as discussed further below.

The Petitioner's initial brief before the Director focused on the importance of the IT industry and his skills. In response to the Director's RFE, the Petitioner submitted another brief restating much of his initial brief. He also described his intention to take on an IT consultant role and described his expertise in areas such as cybersecurity, and digital transformation. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the Dhanasar framework, which looks to whether a petitioner is well-positioned to advance a proposed endeavor and "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The Petitioner's response to the RFE also described the demand for IT workers and the shortage of science, technology, engineering, or mathematics (STEM) workers, which his proposed endeavor would help alleviate by providing IT services. However, the alleged shortage of occupations or occupational skills does not render his proposed endeavor nationally important under the Dhanasar framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. The Petitioner's response to the RFE also highlighted the importance of IT in various sectors of the economy, such as manufacturing, communications, and explained how using IT services can impact small and medium-sized businesses, which would impact the U.S. economy. He submitted additional articles describing the technology industry, and also articles on immigrants as economic contributors and foreign-born stem workers. However, the issue is not whether the information technology industry or having foreign-born workers in a STEM industry and contributing to the economy are nationally important, but rather, the evidence must demonstrate the national importance of the Petitioner's specific endeavor of providing IT solutions to U.S. businesses. See id. at 889 (explaining the relevant

question in determining national importance 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" and its prospective impact, including whether it has broader implications within a specific field or industry).

In response to the RFE, the Petitioner also submitted a business plan which discussed his running a company in the United States. In the plan he described software advances, with respect to artificial intelligence and chatbots for example, and provided data on the IT industry's use of such technologies. The plan then discussed the role of IT consulting in the United States and the role business analytics play in the industry. Again, we recognize the value of IT services; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Id. at 889. Here, the Petitioner has not shown that his proposed endeavor impacts the IT field more broadly to establish its national importance. See id. at 893 (determining the petitioner's STEM teaching activities, while they had substantial merit in relation to U.S. educational interests, did not rise to the level of having national importance because they would not impact his field more broadly). The Petitioner did not establish that the strategies he intends to use in his company or the training he intends to provide his employees would improve the IT industry or its technologies more broadly. He therefore did not establish that his undertaking may have national importance, because "it has national or even global implications within [his] field," as contemplated by Dhanasar. Id. at 890.

The Petitioner also asserts that through his company, he would deliver IT solutions to improve efficiencies of companies in many industries in the United States. His business plan also provided information on the Petitioner's company, including its hiring and financial forecast. The Petitioner did not present supporting evidence, corroborating the assertions and figures with respect to the data he provided on his company. Moreover, the Petitioner did not demonstrate that his proposed endeavor's claimed revenue and employment projections, even if credible or plausible, are such that the endeavor will have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. For instance, although the business plan forecasts sales from $630K in year one to $2.9 million in year five, the Petitioner did not establish the significance of this data to show that the benefits to a regional or the national economy would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Similarly, even though the business plan claims the creation of six positions in year one and 25 positions in year five, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to the U.S. economy more broadly at a level commensurate with national importance or would utilize a significant population of workers in an economically depressed area. For all these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications within a field or industry rising to the level of having national importance, would offer substantial positive economic effects, or has significant potential to employ U.S. workers, particularly in an economically depressed area.[2]

[2] The business plan also summarized the Petitioner's background and included quotes from recommendation letters the Petitioner had provided in support of his assertions that he is an individual of extraordinary ability. The recommendation letters attested to the quality of the Petitioner's work and experience. Although the letters described his duties and praised his skills and experience, they do not evidence the broader impact of the Petitioner's work. Moreover, as stated previously, the Petitioner's skills, expertise, and abilities relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890.

Returning to the Petitioner's assertion that the Director did not follow USCIS policy guidance specific to entrepreneurs in analyzing his evidence in determining his eligibility for a national interest waiver, we disagree. According to the USCIS policy manual, there may be unique aspects of evidence submitted by an entrepreneur undertaking a proposed endeavor, and officers may consider, for example, evidence of revenue generation, growth in revenue, and job creation by a U.S.-based entity; awards or grants; letters and other statements from third parties evidencing the merits of the entrepreneur's business in assessing national importance. See generally 6 USCIS Policy Manual F.5(D)(4), https://www.uscis.gov/policymanual (providing, as guidance, specific evidentiary considerations for entrepreneurs).

On appeal, the Petitioner lists the categories of evidence identified in the USCIS policy manual as relevant to analyze whether an entrepreneur merits a discretionary waiver of the job offer requirement "in the national interest," and identifies areas in the United States, e.g., Maine, Massachusetts, Florida, Arkansas, Arizona, where he intends to operate his business and again provides his company's growth metrics. We recognize that evidence of a company's revenue generation may show a proposed endeavor's national importance when coupled with other evidence, such as location of a current or proposed business in an economically depressed area that has benefited or will benefit from jobs created by the business. See generally id., supra, (providing, as guidance, how growth metrics may support the national importance of an entrepreneur's endeavor). However, as we explained, the Petitioner did not present corroborating evidence of his projected revenue generation and job creation or show that the areas in which he asserts his business will operate are economically depressed areas to support his endeavor's national importance.

The Petitioner also asserts on appeal that the current administration is prioritizing infrastructure, and he explains how he can contribute to this U.S. government priority. But the Petitioner did not present evidence that he received any awards or grants by the U.S. government, other entities, or investors to validate and support a finding that his proposed endeavor is nationally important. See generally id, supra, (providing, as guidance, how awards or grants may provide independent validation and support for a finding of national importance of an entrepreneur's proposed endeavor). The Petitioner again argues that his company's strategy heavily focuses on machine learning and artificial intelligence, but as discussed above, the Petitioner did not present evidence that his strategies would improve or add novel technology to the IT field. In addition, he did not present evidence that he holds any intellectual property significant to the IT field. See generally id, supra, (providing, as guidance, how development of intellectual property may support the national importance of an entrepreneur's evidence). Further, even if a specific STEM field or infrastructure plan is a government priority, the Petitioner must show that his specific proposed endeavor is nationally important. Id. at 893. As discussed, the Petitioner has not shown that his proposed endeavor has broader implications for the IT field beyond his own clients and business or that it will have sub positive economic effects or significant potential to employ US workers. As a result, the Petitioner has not established the national importance of his proposed endeavor.

For the reasons discussed above, we conclude the Petitioner has not established his proposed endeavor is of national importance and that he is therefore eligible for a national interest waiver. As our findings are dispositive of this appeal, we reserve the Petitioner's arguments regarding whether the Petitioner

has demonstrated the third Dhanasar prong. See INS v. Bagamasbad, 429 U.S. at 25; see also Matter of L-A-C-, 26 I&N Dec. at 526 n.7 (BIA 2015).

IV. CONCLUSION

The Petitioner has not established that he is eligible for the underlying EB-2 classification. Further, he has not met the requisite first prong of the Dhanasar analytical framework and has not established that he merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

ORDER: The appeal is dismissed.