U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34761767

Date: DEC. 3, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer, seeks classification as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record established the Petitioner's exceptional ability, but did not establish that he qualifies for the national interest waiver. The Petitioner filed a combined motion to reopen and reconsider, which the Director dismissed. The matter is now before us on appeal under 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 a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

II. ANALYSIS

The Director determined that the Petitioner qualifies as an individual of exceptional ability. The issue before us is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that the Petitioner had not established the national importance of the proposed endeavor, and had not shown that, on balance, a waiver of the job offer requirement would benefit the United States.

In Brazil in 1997, the Petitioner earned a two-year degree as a data processing technician. In 2000, he began working as a technical leader, solutions architect, and software developer for an informatics company in Brazil. He has been self-employed since 2011, and has been in the United States since April 2022 when he entered as a B-2 nonimmigrant visitor.

A. Proposed Endeavor

The matter before us is not the denial of the petition, but rather the Director's dismissal of the Petitioner's combined motion to reopen and reconsider. Therefore, the Petitioner must establish on appeal that the Director erred by dismissing the motion.

At the same time, however, we will discuss elements from earlier stages of the proceeding for context.

When he filed the petition in August 2022, the Petitioner stated that his proposed endeavor is to "implement agile methodologies of software analysis and develop strategic plans," and to benefit "U.S. businesses by optimizing processes, reducing costs, increasing productivity, enhancing business intelligence, and helping companies operate more efficiently" while addressing a "shortage of qualified and skilled professionals."

The Petitioner submitted information about "the Information Technology [(IT)] field" and stated that his "best skills are Networking, Software Development, Cloud, Internet, User experience, and AI [artificial intelligence]/machine learning." The Petitioner asserted that he would "help organizations around the country to implement and improve their entire IT system[s]" and "provide training on themes related to solutions, as well as other subjects of great relevance within the information technology area."

The Petitioner submitted an expert opinion letter from a professor of computer science at [redacted] The letter indicated that the Petitioner "will create, develop, and implement innovative solutions to attend [to] U.S. companies' needs . . . by implementing systems and processes and providing real-time integration to [client] companies."

In a request for evidence (RFE), the Director asked for "[a] detailed description of the proposed endeavor," supported by "[d]ocumentary evidence."

In response, the Petitioner submitted an April 2023 business plan indicating that his company will "design, develop, and deliver pioneering IT solutions" and "introduce an innovative, artificial intelligence-powered solution, the so-called [redacted] to assist American citizens and companies in making informed investment decisions in cryptocurrencies." The business plan also indicated that "the Company will also promote the use of robo-advisors, digital platforms that provide automated and algorithm-driven services as a means of easily accessible and cost-effective investment advice." The business plan includes several pages of discussion of cryptocurrency.

In the denial notice, the Director observed that the Petitioner's original description of his proposed endeavor did not include any discussion of cryptocurrency. The Director concluded that the Petitioner "changed the focus of his business" and "the RFE response presented a new set of facts regarding the proposed endeavor." The Director denied the petition based on the Petitioner's "initial proposed endeavor," citing *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998), which held that a petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements.

We agree with the Director that the Petitioner's discussion of cryptocurrency and financial advice amounts to a material change to the proposed endeavor, rather than simply an added detail that was already implicit in the original proposed endeavor. We therefore will not consider the material changes to the proposed endeavor.

We further note that, while the Director concluded that the Petitioner is well positioned to advance the proposed endeavor owing to factors such as his education and experience, the Petitioner has not shown any expertise or prior experience in the area of cryptocurrency and "the use of robo-advisors." Therefore, if we were to accept the Petitioner's modifications to the proposed endeavor, we would also have to reconsider the Director's conclusion that the Petitioner is well positioned to advance that endeavor.

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. 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

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." *See Matter of Dhanasar*, 26 I&N Dec. at 889. 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. *See, generally,* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

In *Dhanasar*, we further 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." *Matter of Dhanasar*, 26 I&N Dec. at 889. 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.

C. Motion to Reconsider

A motion to reconsider must establish that the prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). USCIS may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The Director dismissed the Petitioner's motion, concluding that the motion did not meet the requirements of a motion to reconsider. We agree.

In the initial decision denying the petition, the Director discussed details about the Petitioner's planned business activities, and concluded that the Petitioner "has not offered sufficient evidence to demonstrate that his business stands to impact the regional or national population at a level consistent with having national importance. Nor has he shown that his particular work would have broader implications for the Information Technology field." The Director acknowledged the Petitioner's estimates about staffing and revenue, but concluded that the Petitioner did not "adequately explain how these staffing and revenue forecasts were calculated." The Director also determined that the Petitioner had not "provided a specific physical location for his proposed company," and therefore had "not shown that it would be located in an economically depressed area" as the Petitioner had claimed.

On motion to reconsider, the Petitioner contended that the "proposed endeavor . . . remains unaltered, which is to directly contribute to produce, create, and make substantial contributions for the improvement of the Information Technology Industry in the United States." The Petitioner contended that the discussion of cryptocurrency in the RFE response added details about the same proposed endeavor.

The Director dismissed the motion to reconsider, stating that it did not meet the requirements of such a motion. The Director cited the following conclusions regarding the national importance component of the first *Dhanasar* prong:

- The Petitioner's stated "intention to provide services to future clients" is not sufficient "to demonstrate that the prospective impact of the proposed endeavor rises to the level of national importance";

- "Individually tailored services help serve specific needs of clients, but by nature, they do not represent broadly applicable measures that a wide range of companies can readily adopt"; and

- The Petitioner had not adequately supported his projections of the company's staffing, and had not "provided evidence that the area where the company intends to operate is economically

depressed, or that the specific proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects."

On appeal, the Petitioner states that the Director "committed a legal error by failing to adequately assess the evidence demonstrating the national importance of the proposed endeavor," and that the Director "has repeatedly undermined each argument by introducing new alleged obstacles." As an example, the Petitioner stated that "the alleged change of focus of the proposed endeavor . . . was cited for the first time in the Decision." The Director could not have cited this change of focus at an earlier time, because the change did not occur until the Petitioner responded to the RFE.

In the decision dismissing the motion, the Director stated: "the petitioner however failed to establish his proposed endeavor has national importance from multiple reasons which were addressed in the previous decision." On appeal, the Petitioner states: "This response indicates that USCIS did not consider or discuss the arguments brought by the Petitioner to address the concerns about a change in the proposed endeavor." The Petitioner maintains that he "adequately clarified and explained why the endeavor remained consistent," because "the solutions within the cryptocurrency investment market fall within the original scope of the proposed endeavor, further detailing one type of IT solution he intends to provide."

The record does not support the Petitioner's assertion that his description of the proposed endeavor has been consistent throughout the proceeding. He initially indicated that his proposed endeavor would involve "optimizing processes, reducing costs, increasing productivity, enhancing business intelligence, and helping companies operate more efficiently." Only in response to the RFE did the Petitioner indicate that his proposed endeavor would involve "investment advice," "reduction of transaction costs, and fostering innovation in the financial sector."

The Petitioner has not established that "assisting [customers] in making informed investment decisions in cryptocurrencies" was part of the original proposed endeavor. The initial submission included printouts from the Petitioner's company's website, touting "the fast and safe way for your company to help it function in the best possible way." The website indicated that the Petitioner's company provides "Cloud Analytics Modernization," "IoT and Big Data," "Specialized IT Services," and "Systems Integration." The expert opinion letter submitted with the petition emphasized efficiency and productivity.

Aside from cryptocurrency, the Petitioner asserts that his "proposed endeavor also promises broad and significant innovations in the field of information technology." The Petitioner does not elaborate as to how his proposed endeavor would involve "broad and significant innovations." The Petitioner states that he will "stay abreast of evolving industry standards and best practices," but these practices do not entail innovation by the Petitioner.

The Petitioner states that *Dhanasar* requires "significant potential to employ U.S. workers," which does not specify "the number of workers or the immediate effects of such employment." *Dhanasar* cites "significant potential to employ U.S. workers" as one example of "substantial positive economic effects." *Id.* at 890. The burden is on the Petitioner to establish that the positive economic effects of the endeavor will be "substantial." A limited local impact does not meet this burden, as we

acknowledged when we concluded that the impact of the teaching activity of the petitioner in *Dhanasar* appeared to be limited to that petitioner's own students.

With respect to the Director's conclusion that the Petitioner had not explained the source of the projected employment figures, the Petitioner states: "These projections are not arbitrary; they are grounded in realistic expectations and informed by market analysis and historical performance." The business plan containing those projections, however, did not cite any sources for the figures provided.

The Petitioner also asserts that the Director "overlooked the fact that a HUBZone (Historically Underutilized Business Zone) is a program established by the U.S. Small Business Administration (SBA) to promote economic development and employment growth in distressed areas." The Petitioner maintains that he "establish[ed] that the proposed endeavor will provide services and create employment in a HUBZone" by serving clients in the [redacted] area.

The record indicates that the Petitioner's company contracted with local businesses to provide services such as data migration and website design. The Petitioner has not established that these services would have the "substantial positive economic effects" contemplated in *Dhanasar*.

The Petitioner's assertions do not address the Director's determination that the company's legal address is a residence in an [redacted] suburb, and the Petitioner had not shown that this suburb is in a HUBZone. In the denial notice, the Director observed that the Petitioner had not established the actual address where the business would operate. On motion, the Petitioner acknowledged that "the headquarters of his company will be located in" the suburb, but he asserted that "the majority of its clients will come from [redacted] The Petitioner did not explain how the location of his company's clients would affect his own company's creation of jobs in economically depressed areas.

The Petitioner correctly asserts that job creation is only one of many possible ways to establish the national importance of a proposed endeavor. But *Dhanasar* requires "broader implications." *Id.* at 889. The burden is on the Petitioner to establish that his proposed endeavor will have an impact beyond benefit to his own customers. Speculation about "ripple effects" does not meet this burden. The Petitioner is not responsible for the economic impact of his company's clients.

The burden is on the Petitioner to establish why he should be exempt from the job offer and labor certification requirements.

The assertion, on motion, that "USCIS has acknowledged that the Petitioner possesses exceptional abilities in his field" does not suffice in this regard, because the statutory job offer requirement specifically applies to individuals who, because of their exceptional ability, "will substantially benefit prospectively . . . the United States." The Petitioner must establish a beneficial impact beyond this presumed substantial prospective benefit.

The Petitioner states: "USCIS's interpretation that a national interest waiver is only warranted when 'a wide range of companies can readily adopt' . . . imposes an unrealistic standard for individuals in the Petitioner's position, who, despite not representing large corporations, can still make substantial contributions to the national interest through their innovative endeavors." The burden remains on the Petitioner to establish that the benefit from his endeavor will extend beyond individual clients.

The Petitioner then states that his "innovative IT solutions, although tailored to individual clients, have the potential to lead to widespread adoption and substantial economic impact." It is the Petitioner's burden to show how his specific proposed endeavor will result in these effects. The general assertion that the potential exists for unspecified impact does not suffice.

For the above reasons, we conclude that the Director did not err in dismissing the motion to reconsider.

Because we agree with Director's conclusions regarding the national importance of the proposed endeavor, we need not address, and hereby reserve, the Petitioner's separate assertions regarding the third prong of the *Dhanasar* national interest test. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

D. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). USCIS may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We agree with the Director's determination that the Petitioner's motion does not meet the requirements of a motion to reopen.

As "new information regarding the importance of his proposed endeavor," the Petitioner pointed to language in 6 *USCIS Policy Manual* F.5(D)(2), "Specific Evidentiary Considerations for Persons with Advanced Degrees in Science, Technology, Engineering, or Mathematics (STEM) Fields." The Petitioner submitted copies of some of the government materials that the *Policy Manual* cited as sources. The Petitioner asserted that he "is a STEM professional and skilled software developer" whose "proposed endeavor indisputably impacts a matter that a government entity has described as having national importance."

The Director considered the submitted materials and concluded that the general guidance regarding STEM fields does not establish the national importance of the Petitioner's specific proposed endeavor. The generalized guidance cited on motion does not broadly exempt STEM workers from the job offer/labor certification requirement.

The Petitioner stated that his "proposed endeavor has national importance since it is a matter that a government entity has described as having national importance." The Petitioner cited generalized policy initiatives geared toward various broad areas of STEM entrepreneurship, research, development, and commerce.

The Director concluded that the Petitioner did not submit "evidence demonstrating that the U.S. Federal Government has an interest in the petitioner's specific proposed endeavor as a Chief Executive

Officer and Head of Operations leading his company." The Director therefore dismissed the motion to reopen.

On appeal, the Petitioner asserts that the Director imposed "an unreasonable standard, as it is highly improbable for the Petitioner, or any individual seeking a national interest waiver, to specifically demonstrate the U.S. Federal Government's interest in their particular endeavor." However, the petitioner in *Dhanasar* "submitted detailed expert letters describing U.S. Government interest and investment in his research." *Matter of Dhanasar*, 26 I&N Dec. at 892.

The *USCIS Policy Manual*, which the Petitioner cited on motion and then on appeal, likewise refers to specific statements of interest:

> [L]etters from an interested government agency or quasi-governmental entity could prove favorable for purposes of the first prong if, for example, they establish that the agency or entity has expertise in the proposed endeavor and that the proposed STEM endeavor promises to advance a critical and emerging technology or is otherwise important for purposes of maintaining the United States' technological prominence.

6 *USCIS Policy Manual*, *supra*, at F.5(D)(3). Not every proposed endeavor in a STEM field will be able to meet this threshold of evidence. The statutory job offer requirement ordinarily applies to professionals and entrepreneurs in STEM fields.

The Petitioner has not shown that the Director erred in dismissing the motion to reopen.

III. CONCLUSION

The Petitioner has not established that the Director erred in dismissing the combined motion to reopen and reconsider. Therefore, we will dismiss the appeal.

ORDER: The appeal is dismissed.