U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35209006

Date: DEC. 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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. The Director determined that the Petitioner qualifies as an individual of exceptional ability; however, the Director also concluded that the record did not establish that a waiver of the job offer requirement, and thus of a 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. See *id.* at 888-91 for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as an individual of exceptional ability. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the endeavor as a plan to "establish and direct the operations of [a company] based in [redacted] Florida, [that] will specialize in providing services related to IT consulting solutions, including implementation, development, and migration of existing software to cloud environments, as well as software development for companies of several segments, resulting in improved performance, increased security, and reduced costs." The Petitioner submitted a business plan for his startup information technology consulting services company, which describes "provid[ing] application and system maintenance and support to ensure the availability and efficiency of the systems implemented for customers" and "creating custom solutions that address the unique needs of each client."

The business plan clarifies, "In the first year of operations, [the Petitioner] will establish his housing in [redacted] Florida, and his company will initially start with virtual operations." The business plan also indicates, "The Petitioner will serve as the Chief Executive Officer of the Company," with six additional workers in the first year of operations, with the following job titles: secretary, programmer, customer support manager, IT security analyst, cloud management analyst, and sales representative. The business plan anticipates the company will employ 25 total workers—including the Petitioner—within the first five years of operations, with the following job titles: three programmers, customer support managers, and software developers, respectively; two secretaries, administrative assistants, RPA developers, IT security analysts, cloud management analysts, DevOps engineers, and sales representatives, respectively; and one operations coordinator, in addition to the Petitioner as the chief executive officer.

We note that the business plan and, thus, the proposed endeavor it describes, does not appear to correspond to the description of the Petitioner's self-employed position he provided on the Form I-140, Immigrant Petition for Alien Workers. Specifically, in Part 6. Basic Information About the Proposed Employment on the Form I-140, the Petitioner stated that he would work as a chief executive officer and that his annual wages would be $189,520. However, the business plan indicates that the startup information technology consulting services company's chief executive officer's annual wages would

be $80,000 during the first year of operations, increasing to $97,241 in the fifth year of operations—at most approximately half of the annual wages indicated on the Form I-140. None of the annual wages for any of the 25 positions during any of the first five years of the Petitioner's startup information technology consulting services company match the annual wages the Petitioner indicated on the Form I-140 that he would receive for his self-employed position. Thus, the business plan's summarization of the proposed information technology consulting services company's wages directly conflicts with the Petitioner's statements on the Form I-140 regarding what his self-employed annual wages would be for working as that startup company's chief executive officer.

Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The inconsistent information in the Petitioner's business plan, compared to the information he provided on the Form I-140, regarding the annual wages he would receive cast doubt on whether the business plan corresponds to the position—and, thus, to the proposed endeavor—described on the Form I-140. Therefore, the reliability and sufficiency of the Petitioner's descriptions of the business plan specifically, and the record in general, is diminished. *See id.; see also* 8 C.F.R. § 103.2(b)(1) (providing that a petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (requiring petitioners to establish eligibility at the time of filing a benefit request).

The Petitioner also submitted letters of recommendation and generalized information regarding business and information technology; however, their reliability and sufficiency are undermined for the reasons explained above. *See id.*

The Director determined that the proposed endeavor has substantial merit, as required in part by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. However, the Director also determined that the record does not establish how the proposed endeavor may have national importance, also required by the first *Dhanasar* prong. *See id.* The Director observed that the record does not establish how the proposed endeavor "has implications beyond the company's clients and future employees, rising to the level of national importance." The Director noted that the record does not establish how the proposed endeavor "has significant potential to employ U.S. workers" or that it "stands to provide substantial positive economic benefits to the region where it operates or the United States." The Director also concluded that the record does not satisfy the second and third *Dhanasar* prongs. *See id.* at 888-91.

On appeal, the Petitioner generally asserts that "surveys, articles, and experts' testimonies" in the record establish that the proposed endeavor has national importance. He also notes that a letter of recommendation in the record "highlight[s] the significant benefits [the Petitioner's company] will bring to the U.S. business landscape." The Petitioner summarizes generalized information regarding business and information technology, apparently corresponding to the "surveys" and "articles" he references on appeal. The Petitioner also reiterates information from his business plan about his consulting services company's plan to provide "tailored services" for its clients and customers, and regarding his company's hiring plan. The Petitioner further asserts on appeal that his proposed endeavor "addresses a matter that a government entity has described as having national importance," specifically referencing the 2023 National Cybersecurity Strategy and the Technology Modernization Centers of Excellence Program Act of 2020. Relatedly, the Petitioner asserts that his "proposal

involves a range of STEM professionals, [which] align with the Critical and Emerging Technologies (CETs) identified by the Department of Homeland Security (DHS) and the 2022 National Security Strategy."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the "surveys [and] articles" in the record, which the Petitioner references on appeal, provide generalized information regarding business and information technology. However, the generalized information does not address the Petitioner, the specific endeavor he proposes to undertake, and how its potential prospective impact may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See id.* For example, the generalized information in the record does not address how the Petitioner's proposal to found a startup information technology consulting services company may have national or even global implications within the field of information technology, or any other particular field, such as those resulting from certain manufacturing processes or medical advances. *See id.* As another example, the generalized information in the record does not discuss how the Petitioner's plan to employ between six and 25 workers—including himself—"initially start[ing] with virtual operations" but eventually in the [redacted] Florida, metropolitan area demonstrates significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. *See id.*

Relatedly, neither the 2023 National Cybersecurity Strategy nor the Technology Modernization Centers of Excellence Program Act of 2020 address the Petitioner, the specific endeavor he proposes to undertake, and how its potential prospective impact may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. The governmental interest described in that strategy policy and act may inform an analysis of whether, on balance, waiving a job offer requirement would benefit the United States, as contemplated by the third *Dhanasar* prong, if the proposed endeavor first demonstrates national importance. *See id.* at 888-91. However, without addressing the Petitioner and the specific endeavor he proposes to undertake, the policy strategy and act—and the remainder of the record—do not inform how the proposed endeavor may have national importance, as contemplated by the first *Dhanasar* prong; therefore, USCIS need not consider the issues potentially raised by the third *Dhanasar* prong. *See id.*

We next note that the Petitioner discusses science, technology, engineering, and mathematics (STEM) fields, and he asserts that his proposed endeavor's relation to STEM fields makes his proposed endeavor nationally important. However, as explained above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work, or in which a proposed endeavor will operate; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential

prospective impact," looking for "broader implications." *Id.* at 889. Thus, the issue for determining national importance is not whether a proposed endeavor is within a STEM field but, rather, whether the potential prospective impact of a proposed endeavor—when it is in a STEM field—will have broader implications within that STEM field indicative of national importance. *See id.*; *see also generally* 6 USCIS Policy Manual F.5(D), https://www.uscis.gov/policy-manual.

As explained above, the Petitioner's description of the proposed endeavor—particularly regarding the annual wages he would pay himself as the chief executive officer of his own startup company—directly conflict with information the Petitioner provided on the Form I-140, specifically the annual wages he would pay himself as chief executive officer. Therefore, the Petitioner's description of the proposed endeavor casts doubt and reduces the reliability and sufficiency of both the business plan in particular and the remainder of the record in general. *See Matter of Ho*, 19 I&N Dec. at 591; *see also* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49.

Even to the extent that the business plan—and the remainder of the record—may be reliable and sufficient, it does not establish how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Rather, the business plan—and the record in general—describes benefits that apply to the Petitioner, his information technology consulting services company, and its clients and customers. For example, the business plan discusses "provid[ing] application and system maintenance and support to ensure the availability and efficiency of the systems implemented for customers" and "creating custom solutions that address the unique needs of each client." The record does not clarify how providing services that directly benefit the information technology consulting services company's clients and customers may have broader implications beyond those clients and customers indicative of national importance. *See id.* In turn, the record does not establish how the proposed endeavor may have national or even global implications within the field of information technology, or any other field, such as those resulting from certain improved manufacturing processes or medical advances. *See id.* As another example, the record does not establish how employing between six and 25 workers in the position titles noted above—including the Petitioner—"initially start[ing] with virtual operations" may demonstrate a significant potential to employ U.S. workers, whether in the Petitioner's proposed residence in the [redacted] Florida, metropolitan area or in any other particular locale. The record does not otherwise establish how the proposed endeavor—providing information technology consulting services to clients and customers—may otherwise have substantial positive economic effects, particularly in an economically depressed area. *See id.*

We acknowledge that the Petitioner also references "experts' testimonies" and a letter of support in the record. However, as noted above, the Petitioner's business plan is neither reliable nor sufficient, *see Matter of Ho*, 19 I&N Dec. at 591, nor does it establish how the proposed endeavor may have national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. In turn, because the reliability and sufficiency of the record in general is minimized, the reliability and sufficiency of the referenced opinions are also minimized. *See Matter of Ho*, 19 I&N Dec. at 591. Moreover, even if the referenced opinions may be reliable and sufficient, which they are not, because the Petitioner's own business plan does not support the conclusion that the proposed endeavor may have national importance for the reasons addressed above, the business plan—and the record in general—does not support the opinions' conclusions regarding whether the proposed endeavor may have national importance. *See, e.g., Matter*

of V-K-, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.