U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29248108

Date: FEB. 08, 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 well as a national interest waiver of the job offer requirement attached to this EB-2 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 that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

[1] See also Poursina v. USCIS, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

• On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree.[2] However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further found that the record does not satisfy the second or third Dhanasar prongs. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor a petitioner 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 Petitioner indicated in his Form I-140 that he intended to be a computer and information system manager. He explained that he proposes to continue working for two businesses he co-founded in Florida. The first business, [redacted] was established in 2014 and is described as a natural disaster restoration business for which the Petitioner has been its chief executive officer overseeing the business' operations. The business specializes "in managing and addressing all types of pre and post natural disaster restoration projects through the implementation of new automated systems and custom technologies." The Petitioner describes being "the brains behind the development of new systems and technologies, as well as the implementation of all new tools and methods."

The second business, [redacted] is described as an information technology solutions business established in 2019, for which the Petitioner would be its chief executive officer and intellectual mentor of products and solutions. Its business plan explains that the business would mainly provide information technology consultation services to improve the efficiency of companies in automobile sales, restoration services, and condominium property management. The business would also provide the Petitioner's newly designed moisture remediator sensor, [redacted] as well as its other information technology products. The business plan explains that based on the business' current clients and the anticipated growth of the restoration industry, the business intends to expand in its second year to the U.S. national market and in its third year to the Canadian and European markets.

The Petitioner describes [redacted] as "a central box unit that constantly tracks, collects, analyses [sic] information from various sensors located around the worksite and transmits it to project managers remotely by LTE/4G/5G, Wi-fi modem sending and receiving Text Message or file transfer and record [sic] the information on a MicroSD." The Petitioner further states, "The information being

[2] The record establishes that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree, and that he has at least five years of progressive, post-baccalaureate experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

collected includes critical aspects of any construction worksite and alerts the project managers when/if they exceed acceptable safety levels. . . . This data collection and analysis has always been done by the people at the worksite, . . . and inevitably lended itself vulnerable to human errors." The Petitioner contends the [redacted] eliminates "the need for human presence at the most dangerous worksites like post hurricane and earthquake locations, as well as improving the reliability of the data gathered and analyzed. In sum, the [redacted] improves worksite and workers safety, reduces cost of labor and time, and improves the quality and analysis of this critical data."

The business plan indicates that the business would also offer three technology products: Smart Tracking, Logistics Tracking, and Good Investment, which are delivered through two technology products developed by the business, [redacted] is described as an inventory tracker "providing real-time information fetched by radio-frequency identification tags . . . to track the precise location of equipment, materials, work-in-progress, and finished goods." The business plan states that [redacted] would provide "unique insights into customer opinion as a social media tool specially designed to inform on topics pertinent to the client's brand, such as customer perception." The product helps companies with their competitive strategy empowering them "to better manage crises in real-time, anticipate customer needs, as well as predict future trends based on past performance and analysis."

We agree with the Director that the Petitioner's endeavor has substantial merit.

With respect to the national importance of the proposed endeavor, the Director found that "the [P]etitioner has not shown how his proposed endeavor in this case stands to sufficiently extend beyond the organization, its clients, and the individuals the [Petitioner] would serve to impact the industry or field more broadly." The Director stated that the Petitioner did not "demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance" or "that the specific endeavor he proposed to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation." Therefore, the Director found that the Petitioner did not meet his burden in establishing the national importance element of the first prong of the Dhanasar framework.

On appeal, the Petitioner contends that the Director misapplied the preponderance of the evidence standard and erred in the analysis of the three Dhanasar prongs. The Petitioner's appeal focuses on his work with his new business, [redacted] He contends, "[T]he national importance of the [P]etitioner's proposed endeavor resides among other things in providing value to the community through services, community outreach, and by creating well-paying jobs." The Petitioner further argues that this business' technology "will help clients across the U.S. to accelerate their growth, cut costs, mitigate risk, and streamline important processes" aiding in the longevity and growth of these businesses. The Petitioner argues that his work aiding in the growth of companies will have a national impact by driving innovation and diversity of services; supporting the manufacturing industry; introducing new technology to the U.S. market; transferring his professional knowledge to the U.S. market; and contributing to U.S. government initiatives related to field of science, technology, engineering, and math (STEM), entrepreneurship, and small businesses. The Petitioner also stresses his proposed endeavor would have economic benefits to the local and U.S. economies through job creation and generating tax revenue. The Petitioner argues that the evidence in the record, including his company's business plan and reports and articles, demonstrate the national importance of his

proposed endeavor. Upon de novo review, we find the record does not demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar's* first prong.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed his evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

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. See Dhanasar, 26 I&N Dec. at 889. The business plan for [redacted] describes the business and the products and services it offers to its clients. The business plan explains that the business intends to focus on providing its products and services to automobile sales companies, restoration companies, and condominium property management companies due to the expected demand for information technology services for these businesses. The business plan also describes the Petitioner's professional experience, including his work with his other company, [redacted] the location of the business' office in [redacted] Florida; the expected economic growth of the information technology consulting industry in the United States; the need for the business' products and services; and the business' marketing strategy, projected personnel, and financial forecasts.

As argued in the appeal, the business plan contends that through technological changes, "clients will be generously rewarded with increased production levels, higher profit margins, and reduced downtime and overall inefficiency." The business plan also describes the business' potential national-level impact argued in the appeal, including: the business' support of the U.S. manufacturing industry; its introduction of new technologies to the U.S. market; its contributions to important U.S. government initiatives related to entrepreneurship, small businesses, and the field of science, technology, engineering, and math (STEM); its transferring the Petitioner's professional knowledge to his employees and clients; and its contributions to the growth of the U.S. economic and socioeconomic development through job creation, generating taxes, and promoting innovation.

The Petitioner has not offered sufficient information and evidence supporting the claims in the business plan. 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 demonstrate that the Petitioner's proposed endeavor with his business, [redacted] will substantially benefit the field of information technology, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. at 889. The evidence does not suggest that the Petitioner's information technology services business would impact the information technology field more broadly or provide the claimed economic benefits to the United States.

Besides general assertions, the record does not show that the business' proposed information technology services and products would provide innovations in the field or economic benefits beyond

the business and its clients. Although the Petitioner expresses his desire to contribute to the U.S. economy and to support innovations in the information technology field, he has not established with specific, probative evidence that his endeavor will have broader implications in his field, will have significant potential to employ U.S. workers, or will have other substantial positive economic or societal effects to the United States. The Petitioner's claims that his information technology services business has the potential to have a national impact have not been established through independent and objective evidence.

The record includes marketing materials and a patent application for one of the business' products, [redacted] However, the record does not support the Petitioner's claims relating to the design, use, and successes of the product, or the potential prospective impact of his business' other technology products. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide economic and socio-economic benefits. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

The business plan projects that in its fifth year, the business will have created 13 jobs and will be paying almost a million dollars in wages. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 13 jobs and paying almost one million dollars in wages by its fifth year in business rises to the level of national importance. Also, without sufficient documentary evidence that his proposed job duties as an owner, the chief executive officer, and the intellectual mentor of products and solutions for his business would impact the information technology industry more broadly, rather than benefiting his business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner further claims national importance of his proposed endeavor based on industry reports and articles. The Petitioner argues the reports and articles demonstrate a need for information technology professionals and that the Petitioner's proposed endeavor would contribute to nationally important U.S. government initiatives supporting STEM professionals, entrepreneurs, and small businesses. He argues that his proposed endeavor would help the United States fill the need for STEM professionals and, as an entrepreneurial endeavor, it will create ripples of positive economic impact. The reports and articles describe the shortage of information technology workers; the growth of the information technology industry; the importance of entrepreneurs to the U.S. economy; workplace safety for natural disasters; emergency response resources for disaster site management; mold in the workplace; temperature and humidity; indoor environmental quality; and the industry of car dealerships and the expected demand for cars in the United States.

We recognize the importance of the STEM fields and "the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security."[3] "With respect to the first [Dhanasar] prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance. Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, . . . have sufficiently broad

[3] See generally 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual.

potential implications to demonstrate national importance."[4] However, the Petitioner has not established that his proposed endeavor aims to advance STEM technologies or research. Also, the record does not show that his proposed endeavor would have an impact in a STEM field more broadly to establish its national importance.

We also recognize the importance of small businesses and entrepreneurs to the U.S. economy, and the contributions from immigrants who have become successful entrepreneurs. However, being an immigrant working in the United States in the information technology or restoration fields or starting an information technology services business for automotive dealers, condominium property management companies, and restoration businesses, is insufficient to establish the national importance of the proposed endeavor. Instead, of focusing on the importance of small businesses to the U.S. economy or the need for workers in the United States in the information technology or restoration fields, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889. 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. at 890. The articles submitted do not establish any projected economic impact specifically attributable to the Petitioner's proposed endeavor.

To further demonstrate the national importance of his endeavor, the record includes an opinion from [redacted] adjunct professor at the [redacted] in [redacted] New York. The opinion claims that the Petitioner's work with his businesses would positively impact the renovation industry, the U.S. economy, the welfare of American people, and U.S. government initiatives related to national disaster recovery.

The opinion explains the importance of people having access to restoration services to quickly and efficiently repair homes damaged from natural disasters. Due to the increased frequency of natural disasters, the opinion explains that restoration professionals are in high demand and that the Petitioner's businesses would help fill the need for restoration professionals. The opinion also stresses the negative health effects of people living in poor housing, and that the Petitioner's restoration business would indirectly contribute to the physical and mental health of persons needing home repairs. The opinion also indicates that the Petitioner's work in the restoration field contributes to helping U.S. government initiatives supporting the preparation, response, and recovery from natural disasters. The opinion claims that such government initiatives show the national importance of the restoration industry, and that the Petitioner's restoration work is important given its direct relation to supporting recovery from natural disasters.

However, the opinion's focus on the Petitioner working in an important industry which has a need for professionals, instead of focusing on the Petitioner's proposed endeavor, does not establish the national importance of the proposed endeavor. The opinion briefly mentions the Petitioner's intent to "continue to develop innovative technologies – like the [redacted]"; however, it does not describe details of the product and how it has the potential to have a prospective impact on the restoration or information technology industries.

[4] See generally 6 USCIS Policy Manual, supra, at F.5(D)(2).

The opinion also indicates that the Petitioner will "help stimulate significant economic growth and the creation of innumerable employment opportunities" through his businesses. The opinion generally describes the economic "ripple effects" from the construction industry and the expected economic growth of the restoration industry. Based on the Petitioner's professional experience and the expected growth of the restoration industry, the opinion indicates that the Petitioner has demonstrated the potential growth of his businesses and the bolstering of the U.S. economy. However, the opinion provides general assertions about the expected economic growth of the Petitioner's businesses and its benefits to the U.S. economy without providing a basis for the assertions. Also, the opinion's focus on the Petitioner's restoration knowledge and experience does not show the national importance of his proposed endeavor, but instead relates to the second Dhanasar prong.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business or his clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The economic and socio-economic benefits that the Petitioner claims depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between his information technology services work and the claimed results.

Because the documentation in the record does not sufficiently 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("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

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for 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.