U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28112447

Date: FEB. 13, 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 a member of the professions holding an advanced degree and 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 did not establish that the Petitioner qualifies for the national interest waiver. 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.

Before we discuss the merits of the appeal, below, we will address a threshold issue. A petitioner must sign their benefit request. *See* 8 C.F.R. § 103.2(a)(2). An appeal is a benefit request. *See* 8 C.F.R. § 1.2. In this case, the signature on Form I-290B, Notice of Appeal or Motion, is visibly different from other examples of the Petitioner's signature in the record. Given this disparity, it does not appear that the Petitioner personally signed Form I-290B. Our dismissal of the appeal is not based on this apparent discrepancy. Nevertheless, if the Petitioner further pursues this matter, we may require additional corroboration to verify the Petitioner's signature on any future filings.

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. 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 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.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions with a bachelor's degree and progressive post-baccalaureate experience equivalent to a master's degree under 8 C.F.R. § 204.5(k)(2). We need not consider the Petitioner's parallel claim 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 a labor certification, would be in the national interest.

The Petitioner earned a bachelor's degree in computer science in Brazil in 2013. He worked in software development positions for various companies in Brazil from 2007 to 2020. For most of 2020, he served as technology director for an online gambling platform based in the United Kingdom. The Petitioner then resumed working in Brazil until he entered the United States in May 2021 as a B-2 nonimmigrant visitor. He filed the petition in May 2022.

The Petitioner described his proposed endeavor:

> My venture is the creation of an Information Technology Consulting company, that specialize[s] in software development and will be located in [redacted], Florida.
>
> The main services offered by my company will be:
>
> - Software Development;
> - Systems Maintenance;
> - Analysis of user needs;
> - Execution of projects and systems development; and
> - Consulting for the implementation of software and systems.

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. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or

[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).

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. We look for broader implications. An 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 889-890.

The Petitioner has established the substantial merit of the proposed endeavor. The Director concluded, without elaboration, that the Petitioner had also established the national importance of the proposed endeavor. We disagree, as explained below.

Initially, the Petitioner's discussion of his proposed endeavor's national importance consisted of statistics about "startup companies founded by immigrants." These statistics focus on job creation by "$1 billion startup companies," which average "more than 1,200 jobs per company." The Petitioner has not established that his proposed endeavor involves a company of comparable size and economic impact. Rather, the business plan in the record anticipates investment of $199,000 over five years, at which time the company would employ three individuals subordinate to the Petitioner.

The Petitioner indicated that "Industry Reports and Articles" established the national importance of his proposed endeavor. The submitted materials, however, deal with the general subject of immigration, with no specific discussion about the field of software development or the proposed endeavor's place within that field.

In response to a request for evidence, the Petitioner discussed the benefits of entrepreneurship and the importance of small businesses. But the proposed endeavor is one particular small business, rather than entrepreneurship in general or the aggregate economic impact of many small businesses. General assertions about the overall importance of entrepreneurship and small businesses do not establish the national importance of the Petitioner's specific proposed endeavor.

The Petitioner must establish the national importance of the specific proposed endeavor; it cannot suffice for the Petitioner to establish the overall importance of a particular subject, occupation, or field. 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.

The Petitioner also stated that the "services, provided by [his] American company, can completely change the way the Information Technology Consulting market is well positioned and can expand wealth in the US." The Petitioner did not describe the anticipated changes or explain how his company's services would make those changes.

The Petitioner did not establish that his proposed endeavor would have an economic or technological impact beyond the company and its customers. We therefore withdraw the Director's determination that the Petitioner has established the national importance of the proposed endeavor. Nevertheless, we are not dismissing the appeal based on this determination. Rather, our dismissal of the appeal rests on our agreement with the Director's determination regarding the second *Dhanasar* prong, discussed below.

B. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

To establish that he is well positioned to advance his proposed endeavor, the Petitioner cited his "15 years of experience" as a software developer, including "the execution of projects and systems development," "logical reasoning and problem-solving," and "the automation of strategic robots in the financial market."

The Petitioner submitted letters from individuals who had worked with him in various capacities. These individuals attested to the Petitioner's experience and stated that he contributed to the success of past projects. We agree with the Director's determination that, while the Petitioner's experience and education show that he is qualified to work as a software developer, the Petitioner has not established that he is well positioned to advance the proposed endeavor.

The proposed endeavor does not only involve the Petitioner's continued employment as a software developer. Rather, he would serve as the managing director of a company that he would establish himself. The Petitioner did not establish any past experience establishing and running a company in this way.

The Petitioner submitted several documents under the heading "Job Offer." These documents are printouts of email messages that the Petitioner received from recruiters at various companies, inviting the Petitioner to discuss possible employment opportunities in software development. The messages do not mention the Petitioner's own company, which is at the heart of the proposed endeavor. Therefore, the messages do not establish "the interest of potential customers, users, investors, or other relevant entities or individuals" in the Petitioner's proposed endeavor as discussed in *Matter of Dhanasar*, 26 I&N Dec. at 890.

In response to the request for evidence, the Petitioner submitted letters from three customers of his company. The customers offered general praise of the Petitioner's "strategic professional vision" and "ability to learn the concepts of innovation." Apart from the letters' lack of detail, the letters are all dated either December 2022 or January 2023, several months after the petition's May 2022 filing date. A petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). The Petitioner did not explain how these post-filing letters show that he was well positioned to advance the proposed endeavor at the time he filed the petition.

The Director concluded that, while the Petitioner is qualified to work as a software developer, the Petitioner had not established "a record of success," as contemplated by *Matter of Dhanasar*, 26 I&N Dec. at 890, in the type of work described in the proposed endeavor.

On appeal, the Petitioner states: "Through his education and hands-on work experience, he has demonstrated that he is fully capable and well-positioned to advance the proposed endeavor due to his record of achievements and expertise in his field, in addition to the various leading and critical roles for the companies in which he has worked." As noted above, the Petitioner has not explained how his past experience as a software developer for various employers makes him well positioned as an entrepreneur. Owning and running a business involves more than possessing the credentials of a software developer.

In light of the above conclusions, the Petitioner has not met his burden of proof to show the national importance of his proposed endeavor and that he is well positioned to advance that endeavor. Detailed discussion of the remaining prong of the *Dhanasar* national interest test cannot change the outcome of this appeal. Therefore, we reserve argument on the third prong's balancing test.[2]

III. CONCLUSION

The Petitioner has not established that he is well positioned to advance the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

[2] *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).