U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35666723

Date: FEB. 13, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for a 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.

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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id.* 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:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver to be 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as an advanced degree professional. The remaining issue to be determined on appeal 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 initially stated that he intended to operate a company that would expand the number of charging stations for electric vehicles, or EVs, in the United States. He provided the following summary of his proposed endeavor in a business plan:

> The company will develop and provide innovative Refueling EV-charging solutions and services in the United States in order to lead the charge in advancing sustainable transportation.
>
> The company [will] offer smart EV charging controller software integration, EV charging services through its own stations, expert EV charger installation, subscription[s] for updates, tailored customization options, [and] reliable maintenance.
>
> The company [will] make advanced Smart EV charging controllers that are at the forefront of technological innovation. These controllers are designed to optimize the charging experience for electric vehicle owners while ensuring efficiency and safety.
>
> Through continuous innovation, cutting-edge technology, and a passion for sustainability, the company [will] strive to empower individuals, businesses, and communities with he tools they need to embrace electric mobility.

Although the Director determined that the Petitioner's proposed endeavor has substantial merit, the Director concluded the record did not establish that the endeavor is of national importance. On appeal, the Petitioner reiterates his explanation of the national importance of his endeavor. Upon review, for the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

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

In determining national importance, 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." *Id.* 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." *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. Further, 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. *Id.* at 889.

To demonstrate the national importance of his proposed endeavor, the Petitioner submitted letters of recommendation discussing expressing confidence in his knowledge and ability. These letters, however, do not offer insight into a specific endeavor that the Petitioner intends to undertake. We note that evidence of the Petitioner's experience and education generally relates not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second,[2] which evaluates whether a petitioner is well positioned to advance an endeavor. As such, the letters do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

The Petitioner also provided reports and articles discussing federal and state initiatives concerning the expansion of electric vehicle infrastructure, vehicle emissions, climate change; renewable energy and sustainability, and job creation in the United States. While this documentation relates to the area in which the Petitioner intends to work, it does not speak to how the Petitioner's individual endeavor to build or modify electric vehicle charging stations would have a potential prospective impact of national importance. For example, although the Petitioner asserts that the U.S. Department of Energy estimates that 28 million charging stations will be required to adequately service electric vehicles across the country by 2030, he states that his company will create 600 stations by that same year; he does not provide an explanation of how an expansion of hundreds of charging stations would impact a purported need in the tens of millions. And beyond his general intention to expand charging infrastructure in the United States, the Petitioner has not described what his specific endeavor entails or how he would enact it. His response to a request for evidence (RFE) provides the following:

> The company offers smart electric vehicle charging controller software integration, electric vehicle charging services through proprietary stations, professional electric vehicle charger installation, upgrade subscriptions, customization options and reliable service.
>
> The company manufactures advanced Smart EV charging controllers that are at the forefront of technological innovation. These controllers are designed to optimize the charging process for electric vehicle owners while ensuring efficiency and safety.

[2] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

The Petitioner, however, did not specifically describe in either his statement or his business plan how he would undertake an endeavor of a scale that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The record does not contain documentation of software developed by the Petitioner or other evidence of technology that the Petitioner intends to deploy. While the business plan offers an overview of the services the Petitioner intends to provide, the asserted national importance of his proposed endeavor relies on documentation discussing the importance of addressing climate change through the expanded use of electric vehicles; the Petitioner has not explained how his individual company would have a national-level impact by providing "innovative electric vehicle charging solutions and services in the United State to lead the movement to promote clean transportation," nor does he elaborate on what innovations he has developed that his company would provide.

In addition, the Petitioner generally speculates that his company's services would result in job creation in various sectors in the United States, but he has not provided independent evidence or otherwise explained how his company would have a prospective national impact on a specific field. For example, the business plan states that the Petitioner anticipates hiring 21 individuals by his company's fifth year of operation, resulting in "[m]ore than USD 15.2 million in revenue in 2025-2030 [and] at least USD 6.2 million a year starting from 2030." The business plan also estimates that the Petitioner will pay approximately $3 million in taxes within its first five years of operation. The Petitioner has not, however, provided a sufficient basis for these projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is more likely than not that the company will have a substantial positive economic effect within any field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. He has not done so here.

We note that the Petitioner submitted material relating to opportunities in the fields of science, technology, engineering, and math, or STEM, indicating that his endeavor's relationship to a STEM field evinces its national importance. USCIS Policy Manual guidance provides that an endeavor rooted in STEM has national importance when the evidence sufficiently demonstrates that it would help the United States to remain ahead of strategic competitors or current and potential adversaries. We may also determine that an endeavor in a STEM field has national importance when it relates to a field where appropriate activity and investment may contribute to the United States achieving or maintaining technology leadership or peer status among allies and partners. Here, the Petitioner has not explained how his proposed endeavor would position the United States ahead of other nations or achieve or retain technology leadership or peer status with other countries, nor has he specified what technology he has developed that would potentially be advantageous for the United States.

The Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. Specifically, he has not shown that his business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the business plan broadly describes a company that would contribute to the expansion of EV charging infrastructure with benefits to the U.S. economy and the environment, these asserted national impacts are not sufficiently supported by objective evidence related to a specific proposed endeavor. Further, it is not clear how a business of the size and scope described in the business plan would significantly impact a certain region in which his employees or clients are located. The Petitioner has not provided sufficient evidence to show that he

would employ a significant population of workers in a particular region, nor has he shown that his proposed endeavor would offer substantial economic benefits through employment levels, business activity, or tax revenue. As such, the Petitioner has not demonstrated that the prospective benefits to the regional or national economy resulting from his endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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).[3]

III. CONCLUSION

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.

[3] We will also reserve the issue of the Director's determination that the Petitioner did not submit a required Form ETA 9089, Application for Permanent Employment Certification, or Form ETA 750B, Application for Alien Employment Certification, in response to the RFE.