U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29849309

Date: FEB. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer and an entrepreneur, seeks second preference immigrant classification (EB-2) as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 Petitioner qualified for the EB-2 classification as an individual of exceptional ability, but he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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 (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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of *Dhanasar*.[2] On appeal, the Petitioner asserts that the Director misapplied the *Dhanasar* analytical framework, imposed ultra vires evidentiary requirements, and was negligent or biased in its adjudication. Despite the Petitioner's contentions, we conclude that the Director's denial properly followed the *Dhanasar*'s framework and the Petitioner's evidence as provided did not establish the national importance of the proposed endeavor.

We will first address the Petitioner's claims pertaining to the substantive issues under the first prong of *Dhanasar*. The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.* 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 Petitioner initially described his proposed endeavor as advancing his career in the United States "as a Software Developer/Entrepreneur contributing to direct, produce, create and make substantial contributions for the improvement of the Information Technology Industry in the United States" and stated the following:

> I will provide my expertise and skills in the market and technical aspects of Information Technology. I intend to implement agile methodologies of software analysis and develop strategic plans. Ultimately, I will offer intelligent and innovative solutions techniques aiming at supporting many U.S. businesses by optimizing processes, reducing costs, increasing productivity, enhancing business intelligence, and helping companies operate more efficiently.

The Petitioner indicated that his company, [redacted], was "created to advance [his] proposed endeavor" and submitted documents regarding the operation of his company, such as articles of incorporation, registration documents, and business contracts. However, the Petitioner did not provide any further details on his methodologies or techniques in improving the information technology (IT) industry or supporting U.S. businesses. The Petitioner's initial documentation included an IT industry outlook report, an expert opinion letter, and recommendation

[2] The Director also found that the Petitioner did not meet the second or third prong of the *Dhanasar*'s analytical framework.

letters, all of which did not specifically address his endeavor and its impact, but generally provided the background information on the industry's importance and the Petitioner's previous experiences as an IT consultant.

In response to the Director's request for evidence (RFE), the Petitioner reiterated that "[t]he main activity of my business will be Software Development through which I will be able to contribute to the general growth not only of the technology industry but also to the society as a whole in the sense of providing innovation, technology, development, and possibilities for expansion and growth for all types of businesses." The Petitioner also referenced his new project called [redacted] to assist "American citizens and companies in making informed investment decisions in cryptocurrencies" but maintained that "it is not my proposed endeavor instead it is a pioneering tool made by developing a software to be used in the financial market in the benefit of consumers and government in general." Contrary to the Petitioner's statement that [redacted] is not his endeavor, his business plan submitted with the RFE discusses cryptocurrency and its investment trends.

On appeal, the Petitioner asserts that the *Dhanasar*'s analytical framework was intended to "make it easier for individuals, especially entrepreneurs, to establish that a proposed endeavor was of national importance." However, we note that *Dhanasar* intended to "provide greater clarity, apply more flexibly to circumstances of both petitioning employers and self-petitioning individuals, and better advance the purpose of the broad discretionary waiver provision to benefit the United States." *Id.* at 888-89. The Petitioner has not referenced any language in *Dhanasar* that discusses its intention to ease the standards specifically for entrepreneurs.

The Petitioner also claims that the *Dhanasar* decision allowed for "broad definition" of the endeavor's "potential prospective impact" and demonstrating that the endeavor has a national or global implication is "not a requirement" or "not mandatory in the determination of the national importance of a proposed endeavor." In support of this contention, the Petitioner cites to the *Dhanasar*'s passage which states: "[a]n undertaking *may* have national importance for example, because it has national or even global implications within a particular field" (emphasis added). *Id.* at 889.

We acknowledge that an endeavor's "potential prospective impact" can be broadly interpreted. We also agree that evaluating whether an endeavor has national or even global implications in the field is only a part of the analysis under the first prong, as *Dhanasar* also states that "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 890. Here, the Director not only considered whether the Petitioner's endeavor of delivering IT solutions to businesses will have any national or global implications in the field, but also whether it will have any significant economic effects.

For instance, the Director reviewed the expert opinion letter from [redacted], a professor of computer science, information systems, and cyber security at [redacted] and observed that the letter does not address the Petitioner's endeavor with specificity and detail to demonstrate any national or global implications in the field of information technology. The opinion letter generally addresses the value of software developers, IT modernization, and small businesses, and states that the endeavor "impacts a matter that a government entity, has described as having national importance or is the subject of national initiative." However, the letter does not include any persuasive and

corroborating information about the Petitioner's business and its impact rising to the level of national importance. Therefore, the Director correctly applied the *Dhanasar*'s framework to the facts of this case.

The Director also reviewed the Petitioner's business plan but determined that the rest of the record does not sufficiently support the assertions made therein. The plan makes various staffing and financial projections that the Petitioner's company will purportedly achieve in five years, but the record did not contain corroborating evidence to explain how these sales and staffing targets will be realized. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The record shows that the Petitioner largely relied on the industry articles and reports to support the endeavor's national importance, and with the appeal, the Petitioner again submits press releases announcing the Biden Administration's actions to attract STEM talent and pursue equity and excellence in the STEM field, as well as the 2022 U.S. National Science and Technology Council's updated list of critical and emerging technologies, claiming that his endeavor aligns with the important priorities of the government. Although we recognize the value of information technology and importance of STEM related professions, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. We focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." *Dhanasar*, 26 I&N Dec. at 889. However, none of the publications in the record discuss the Petitioner's proposed endeavor, or how it may have "national or even global implications within a particular field" or otherwise have broader implications, such as "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We also note that the Petitioner has not provided details of his IT solutions or methodologies or corroborating evidence of how they somehow differ from or improve upon those already available and in use in the United States, 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 Petitioner provided various recommendation letters from his previous clients and peers, but much of this evidence only shows the Petitioner's accomplishments in his past engagements and projects and does not sufficiently address the Petitioner's specific future endeavor and its broad impact in his field. In addition, the Petitioner's knowledge, skills, and experience in the field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.

The Petitioner also provided copies of service agreements showing that his business provides IT consultant work to clients, such as analysis, maintenance, and development of IT systems and database. The record also includes a letter of intent to invest and partner with the Petitioner in the cryptocurrency project. However, these documents do not corroborate the nature or numerosity of clients or clients' projects to support the claims that his endeavor will have substantial economic impact. We acknowledge that any offer of goods or services has the potential to impact the economy;

however, the record does not support the Petitioner's company would operate on such a large scale that would benefit the U.S. economy rising to the level of national importance or that his endeavor's specific impact will extend beyond his business and his clients to impact the field more broadly.

We will also address the Petitioner's contention that the Director imposed "novel" requirements. The Petitioner states "the Director is substantiating its conclusion on ultra vires requirements as requesting that Applicant proves 'any evidence of his intention to purchase or lease office space at a particular location' is beyond regulations requirements." The Director's statements referenced here is in the context of analyzing whether the endeavor or the Petitioner's business will be in an economically depressed area, or "in a[n] opportunity zone/and or a Hubzone" as provided in the business plan. The specific questions raised by the Director pertain to the location and operation of the Petitioner's business, such as whether the Petitioner intended to lease or purchase a building, whether he will operate the business out of his house in [redacted], Florida, or how it will expand to the city of [redacted] at large or to Nevada, as claimed in his business plan.

We conclude that these questions fall within the parameters of the *Dhanasar* as they relate to the viability of the business, the plans for business growth, and its potential to offer substantial positive economic effects within a certain region or on a national level. Given that the Petitioner's various assertions in the business plan remain unsupported by corroborative and independent evidence, the Director raised these questions to assess the endeavor's economic impact in an economically depressed area and did not impose "novel" requirements as the Petitioner claimed.

Finally, we turn to the Petitioner's remaining claims of deficiencies in the Director's decision. On appeal, the Petitioner explains that his former counsel misfiled the initial petition under the EB-1 visa classification by checking a wrong category on Form I-140, Immigrant Petition for Alien Workers, and caused the filing to result in two different receipts, one for the EB-1 visa classification and one for the EB-2 national interest waiver, as well as two different RFEs and decisions. The Petitioner asserts that he had to "manage two requests for evidence and petitions simultaneously, which has negatively affected the case," but he does not allege any specific error on the part of the Director. Therefore, the Petitioner's claim is unavailing.

The Petitioner further asserts that the Director was "negligent and biased" in adjudicating the case because of different treatments of the same filing in two resulting RFEs, as well as some typographical errors made in two subsequent decisions. The first assertion is unpersuasive because each case before USCIS receives independent review even with identical documents, and national interest waiver cases are discretionary in nature. *See Flores v. Garland*, 72 F.4th at 88. In addition, the typographical errors referenced by the Petitioner that purportedly show negligence appear to be harmless error.[3] *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). The Petitioner has not shown on appeal that the claimed typographical errors prejudiced the outcome of the decision.

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. Similarly, despite the Petitioner's assertions that his endeavor will contribute value to "all businesses" or "society

[3] The typographical errors in the decision consist of 'exception ability' instead of 'exceptional ability' and 'the principle address' instead of 'the principal address.'

as a whole," the record lacks sufficient evidence regarding any national impact in the field or projected U.S. economic impact attributable to his future work, and the endeavor's impact is likely limited to the individuals or clients that his business will serve. Accordingly, the Petitioner has not established his proposed work is of national importance.

Because the Petitioner has not met the first prong of the *Dhanasar*'s analytical framework, we decline to reach whether he meets the remainder of the second and third prongs under the *Dhanasar* framework, and further reserve our opinion regarding whether the Petitioner satisfies the second-preference eligibility criteria.[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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, he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] The Director concluded that the Petitioner qualifies as an individual of exceptional ability without providing analysis on the issue. Contrary to such determination, the Director's RFE discussed how the totality of evidence did not demonstrate that the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business despite that he met three out of the six required criteria at 8 C.F.R. § 204.5(k)(3)(ii). Because the record does not establish that the Petitioner merits a national interest waiver, we will reserve the issue for future consideration should the need arise. *See INS v. Bagamasbad*, 429 U.S. at 25.