U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34693969

Date: FEB. 20, 2025

Appeal of Nebraska 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 either a member of the professions holding an advanced degree or 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 Nebraska Service Center denied the petition, concluding the record did not establish 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 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. Our precedent decision in *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 Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

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

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional but did not establish eligibility for a national interest waiver under any of the three *Dhanasar* prongs. In particular, the Director concluded that, while the Petitioner demonstrated his proposed endeavor had substantial merit, it did not have national importance under the first prong.

Based on our de novo review of the record, we conclude the Petitioner has not sufficiently demonstrated either the substantial merit or the national importance of his proposed endeavor. Specifically, we find that the Petitioner has not submitted sufficient or consistent evidence regarding the substantive nature of his endeavor, such that he can establish he meets the first prong. While we may not discuss every piece of evidence individually, we have reviewed and considered each one.

In his initial filing, the Petitioner submitted a business plan and stated that his proposed endeavor is "to serve as an industrial-organizational technical consultant supporting U.S. organizations in the industrial and manufacturing space through [redacted] Specifically, his company would offer consulting services for manufacturing process innovations, equipment reliability, workplace health and safety management, reliability improvement and sustainability, and building asset management. He also planned to train individuals, whose services he would later outsource to companies, and work with corporate clients to help train their workforce.

The Petitioner described his consultancy services as centering around four pillars: (1) manufacturing/industrial equipment and critical infrastructure reliability and maintenance engineering consultancy; (2) industrial robotics and autonomous systems designs, deployment, reliability, and functional safety consultancy; (3) consultancy services in industrial safety regulatory and legal framework; and (4) sourcing, training, deployment, and management of manufacturing/industrial leadership and STEM talent skill outsourcing services.

The Director issued a request for evidence (RFE) finding there was insufficient information to determine whether the Petitioner's proposed endeavor had substantial merit or national importance. In response to the RFE, the Petitioner advanced two new pillars to describe his endeavor, stating that his company would: (1) develop and implement industrial and advanced manufacturing optimization technologies through [redacted] AI Driven Metaverse; and (2) grow the industrial and advanced manufacturing workforce through [redacted] Career Technical Training Education.[2]

[2] While the Petitioner contends his RFE response clarified the "how" of his endeavor after having explained the "why" in terms of the services he will offer at the time of filing, we observe multiple material changes to the proposed endeavor as initially described.

Specifically, the Petitioner stated his [redacted] AI Driven Metaverse software would integrate "human ingenuity" with emerging technologies such as artificial intelligence (AI) and machine learning (ML) to create software that could forecast equipment degradation, recommend optimal maintenance schedules, and prioritize critical assets. His [redacted] Career Technical Training Education software would offer a "comprehensive mixed reality gamified industrial skill training, testing, and placement academy tailored for the industrial and advanced manufacturing workforce."

In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the nature of the Petitioner's proposed endeavor is unclear. As we will discuss below, the information he provided in his RFE response did not clarify or provide more specificity to his initially described endeavor but, rather, expanded the focus and scope of his work altogether.

Before we drill into the details of those changes, however, we will begin with the fact that that despite the Petitioner's supplementation of the record in response to the Director's RFE and then again on appeal, the record remains unclear as to whether the Petitioner's proposed endeavor is to provide reliability and maintenance engineering consultancy services as an industrial-organizational technical consultant, or to develop software applications. The Petitioner's initial filing made no mention and contained no information on the development of these software applications, and his RFE Response did not further explain his plans to provide consulting services. It is unclear then, how this software development work factors into his consulting and training endeavor as initially described. He has not sufficiently explained what specific activities he will perform, how that relates to his software development, and how much of his time will be devoted to each activity, whether it be consulting, developing software, or training.

In addition to the lack of clarity around the specific nature of the Petitioner's proposed endeavor, the scope of the Petitioner's software is also vague and ambiguous. For example, the Petitioner describes his software as a "novel and proprietary" solution in that it fuses "human ingenuity" with "cutting-edge technology," including AI, ML, and mixed reality. However, he provides little detail on what specifically his software entails, how he will formulate it, how its design is novel, or how it is different from what is already available in the industry. While he describes broad technological concepts and general objectives of his software, he does not adequately articulate *how* he will design his software and weave these technologies together to build his "novel" solution to accomplish his stated goals.

The Petitioner's RFE response also reflects that his software will include an "open source prescriptive reliability solutions component that will enable members of the industrial reliability engineering community to troubleshoot and repair equipment in 'real-time'" through "comprehensive real-time support and knowledge sharing among STEM professionals." But the Petitioner does not sufficiently explain, for instance, who, specifically, will comprise this "industrial reliability engineering community," how exactly the "real-time support and knowledge sharing" mechanism will work, and what quality control measures will be taken. He also does not detail how his knowledge sharing component will avoid users' or contributors' disclosure of their employers' confidential, proprietary information. Furthermore, if his users' ability to troubleshoot and repair equipment in "real-time" depends on knowledge sharing from the community, which is comprised of individuals using the software at arbitrary intervals, it is unclear how the knowledge sharing will result in "real-time

support" that will then reportedly be used to prevent large-scale operational disruptions as claimed. Likewise, if the software relies on a community of users for troubleshooting, it is uncertain what the Petitioner's consultancy role, if any, would be in that process.

The record also does not clearly delineate the Petitioner's target clientele and, therefore, who would be impacted by his future work. The Petitioner's initial business plan reflected that his company's primary targets were e-commerce logistics companies, industrial automation and material handling equipment integrators, and manufacturing companies. The Petitioner also stated that he planned to provide "specialized technical training services for the workforce" through training and apprenticeship programs with community colleges and corporate clients. His focus would be on "creating a high-quality STEM and manufacturing workforce trained in providing RME services."

However, in his RFE response, the Petitioner broadened the scope of his endeavor to include the general public through a free, open-source model in his [redacted] platform, which will be "designed for use by just about anyone." He also indicated an intention to target PK-12 students to offer "gamified training to cultivate interest in STEM professions." While the focus of his training in the initial filing appeared to be "tailored on-the-job technical training" for employees of corporate clients and college students interested in industrial technical roles, his RFE response appears to concentrate on designing his software "specifically for new entrants in the STEM technical disciplines," as well as women, minorities, and disadvantaged groups. This appears to shift and significantly broaden the goals described in his initial filing.

The RFE response's description of the training activities further adds to the lack of clarity. For instance, the Petitioner now states his training services would encompass a variety of additional activities ranging from educational outreach programs, factory tours, workshops, internships, and career fairs, to collaboration with schools for curriculum development and professional development for teachers. The Petitioner has not clearly explained who his target customer base would be, including whether his endeavor's objectives are to train people with prior technical experience, individuals in colleges interested in STEM careers, grade school children, teachers, or others.

Accordingly, the substantive nature of the Petitioner's proposed endeavor remains unclear. Without more specific information about the Petitioner's future work, including how he plans to implement it in the United States, we are unable to evaluate whether his proposed endeavor has substantial merit or national importance. Again, in determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether it meets the requirements under *Dhanasar's* first prong. It is the Petitioner's burden to prove by a preponderance of evidence that he qualifies for the benefit sought, and he has not met that burden here.[3] *Matter of Chawathe*, 25 I&N Dec. at 375.

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[3] The Petitioner submitted a copy of his employment contract with [redacted] The terms of his agreement, however, appear to raise additional concerns under the first and second *Dhanasar* prongs. Even putting aside the issues related to the endeavor's substantive nature under prong one, there are questions regarding how the Petitioner's development of his "novel and propriety" software would be affected by the intellectual property provisions of his employment contract. Further, regarding prong two, there are questions regarding how well positioned the Petitioner would be to execute the endeavor in light of the non-competition clauses in his contract. These are significant hurdles to approval. However, because the petition is not otherwise approvable, we will not address these issues further. That said, the Petitioner should be prepared to address these issues, including the observations we have made here, in any future NIW filings.

On appeal, the Petitioner generally asserts that the Director disregarded the weight of evidence and that the record contained sufficient documentation to demonstrate the national importance of his endeavor. The Petitioner also alleges, among other things, that the Director's decision contained various inaccuracies and erroneous conclusions including, for example, misstatements about whether the Petitioner had submitted his company's business-related documentation, whether he had submitted evidence of his ability to personally invest $100,000 or otherwise finance his startup company, and whether there was an inconsistency in his prospective staffing numbers.

However, as explained above, the Petitioner's proposed endeavor is not sufficiently specific or consistent to establish the substantial merit or national importance of his endeavor. Because the Petitioner has not clearly defined his proposed endeavor, we cannot conclude that he meets the first prong or has otherwise established eligibility for a national interest waiver. While we acknowledge the Petitioner's arguments and explanations, they do not resolve the inconsistencies, discrepancies, and generalities regarding the specific nature and scope of his endeavor as discussed above.[4] Therefore, they do not resolve our adjudication of the case.

Because the identified bases for denial are dispositive of the Petitioner's appeal, further analysis of his eligibility under the second and third *Dhanasar* prongs would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. Therefore, he has not established that he is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] The record does reflect a certificate of incorporation and federal employer identification number for [redacted] which the Petitioner reports is doing business as [redacted] However, the Petitioner has not provided documentary evidence corroborating his claim to invest $100,000 of his personal funds into his company or persuasively explained the discrepancy in his staffing figures. It is incumbent on the Petitioner to resolve any inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unsupported assertions have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).