U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34829841

Date: JAN. 03, 2025

Appeal of Texas 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 an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this classification. 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 the Petitioner did not establish eligibility as an individual of exceptional ability or 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 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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."

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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,[3] 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.

Id. at 889.

II. ANALYSIS

A. EB-2 Visa Classification

The Director determined that the Petitioner does not qualify as an individual of exceptional ability. Because the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether he qualifies for EB-2 classification as an individual of exceptional ability for future consideration should the need arise.[4]

B. Substantial Merit and National Importance

In the petition, the Petitioner stated that he intended to be a Business Intelligence Analyst, and he described the duties as follows: ". . . produce financial insights via data queries, reporting, and pattern spotting." In his introductory cover letter, he expounded on his occupation as a Sustainability and Business Intelligence Consultant. In response to a request for evidence, the Petitioner submitted additional evidence in which he declared that his "proposed endeavor focuses on assuming the role of an Agile Consultant/Technology Project Manager, responsible for implementing and optimizing Agile processes within a company." The Petitioner further explained, in detail, the role of an Agile Consultant in an organization. The Director concluded that the Petitioner's initial proposed endeavor of being a Sustainability and Business Intelligence Consultant in [redacted] Texas had substantial merit. However, the Director correctly determined that the Petitioner made a material change to his endeavor. The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Further, a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988). Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of assuming the role of an Agile Consultant/Technology Project Manager and will only address his initial proposed endeavor of being a Sustainability and Business Intelligence Consultant.

[3] *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).

[4] *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").

The Director determined that the Petitioner did not establish that his proposed endeavor in his role as a Sustainability and Business Intelligence Consultant met the national importance element of the first prong of the *Dhanasar* 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.

On appeal, the Petitioner states that the decision was influenced by a discriminatory factor, specifically, racial prejudice. We note that there was no racial animus conveyed in the decision, and the Petitioner does not explain why he makes this unsupported claim. We agree with the Director that the Petitioner established that his proposed endeavor in the field of sustainability and business intelligence has substantial merit, but not national importance. For the reasons set forth below, we conclude that the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.[5]

On appeal, the Petitioner states his "proposal seeks to secure positions within US companies, focusing on sustainability initiatives and leveraging expertise in both sustainability and business intelligence, along with agile methodologies and project management experience. By integrating these diverse skill sets, my profile and role becomes a linchpin in addressing critical issues such as climate change, urbanization, and environmental degradation while promoting economic growth, social equity, and environmental stewardship." He indicates that he ". . . could identify opportunities for optimizing resource utilization, reducing carbon emissions, and enhancing overall efficiency in urban infrastructure and services." The Petitioner notes that, "In a world whit [sic] a rapidly evolving global landscape, the role of a Sustainability & Business Intelligence Consultant is of paramount importance not only for individual companies but also for the broader national and global economy. I have experience and have held responsibilities in supply chain management within the Oil & Gas industry, which has prepared me well to drive transformative projects aimed at sustainable economic development while also advancing economic growth and competitiveness." The Petitioner proffers that by combining his skill sets, he "could become an invaluable asset in driving sustainable projects across the United States." Importantly, the Petitioner addresses the value of the proposed role of a Sustainability and Business Intelligence Consultant in evincing national importance. He asserts that the ". . . proposal of this role demonstrates national importance to the United States by addressing critical issues such as climate change, urbanization, and environmental degradation. Evidence documenting the potential prospective impact of sustainable projects showcases their significance in mitigating carbon emissions, fostering economic growth, and enhancing quality of life." However, the record does not establish the Petitioner's proposed endeavor would have broad enough impact sufficient to rise to the level of national importance.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the Petitioner's work. We focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889.

[5] If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs.

While the Petitioner claims that his proposed endeavor serving as a Sustainability and Business Intelligence Consultant is of national importance because he will lead "the charge in incentivizing clean energy production, reducing carbon emissions, and creating green job opportunities," he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. For example, the record does not include any forecasts regarding job creation, revenue and wages. Moreover, he does not indicate that he will operate in an economically depressed area. Consequently, he has not adequately shown how his endeavor will benefit the regional or national economy.

The Petitioner asserts that [redacted] is susceptible to severe weather events due to climate change, and that by leveraging the strengths of [redacted] energy sector, its diverse population, and its robust educational and cultural landscape, he envisions creating a blueprint for the entire nation. To achieve his goal of transforming [redacted] into a sustainable city, he plans to collaborate with local influencers, content creators, media outlets, government agencies, businesses, non-profit organizations, and educational institutions, among others. However, it is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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 include adequate corroborating evidence to show what the Petitioner's proposed work entails and how that endeavor offers broader implications in his field of sustainability and business intelligence to U.S. societal welfare that rise to the level of national importance. Further, the Petitioner has not presented evidence of any potential benefits to the regional or national economies resulting from his undertaking that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. General assertions of economic impact are not sufficient to establish the actual potential economic impact of the proposed endeavor.

Accordingly, we determine that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the Petitioner has not demonstrated eligibility for a national interest waiver. As the 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 "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.