U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29464178

Date: JAN. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks 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 Texas Service Center denied the petition, concluding that the Petitioner 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed

endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director did not indicate in the decision whether the Petitioner qualifies for classification as a member of the professions holding an advanced degree. However, in a prior request for evidence (RFE), the Director specifically concluded that "[the Petitioner] qualifies as a member of the professions holding an advanced degree." The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, in November 2021. An eight-page document identified as a personal statement, submitted at the time of filing, describes the endeavor as a plan "to lend [the Petitioner's] expertise in automation, cloud computing, and software development to the U.S. technology landscape, and especially to small businesses in the U.S. that do not have the resources to thrive in the new digital world." The document references "solar fueled data centers; the migration of the data into the cloud; as well as the use of IOT [t]echnology," although the document does not clarify how the endeavor will implement those concepts. The Document indicates that the endeavor will be "based on, [sic] but not limited to, the state of Texas and throughout the United States." The document also summarizes the Petitioner's prior experience, and it provides generalized information regarding information technology. We specifically note that, at the time of filing, the record did not indicate the Petitioner would publish information regarding his endeavor for others to replicate.

In response to the Director's RFE, the Petitioner submitted, in relevant part, a one-page document, dated April 2023, identified as a "Proposed Endeavor Statement," and an undated, seven-page document identified as an "Updated Personal Statement." The "Proposed Endeavor Statement," dated after the Form I-140 filing date, indicates that the endeavor is a plan:

> to [d]evelop and [i]mplement a server infrastructure using [f]ree [h]ardware and [s]oftware IOT technology, powered by solar energy, in order to give low cost access to cloud services to small business owners belonging to the Hispanic community, train them and work closely to be able to develop their businesses by providing them with services such as: email, commercial websites, online service platforms and home delivery, inventory control, video surveillance and process automation.

The document adds that the Petitioner will "publish all the necessary information [on a particular website] including technical specifications of the resources used, software, and functional designs of

the technology so that other professionals have access and can replicate it in other cities." The document asserts, "in this way the impact of the proposed endeavor will have a nationwide impact."

In turn, the document titled "Updated Personal Statement" provides generalized information regarding the information technology industry, its customers, and its workforce. However, the document does not elaborate on what the Petitioner's proposed endeavor would entail and how the Petitioner proposes to accomplish the endeavor.

We note that the documents identified as personal statements submitted both initially at the time of filing and in response to the Director's RFE, and the "Proposed Endeavor Statement," contain conspicuous elements that cast doubt on whether the Petitioner wrote them and, thus, that they reflect his thoughts and intentions regarding the proposed endeavor. Specifically, the signatures on the final pages of the respective documents are fuzzy and pixelated, indicating that they are low-resolution images of signatures that could have been attached to the document in a word processor by any individual, rather than indicating that the Petitioner signed the document himself. *See generally* 8 C.F.R. § 103.2(a)(2) (describing acceptable signatures on paper documents, in relevant part, as "handwritten"). The fuzzy and pixelated signatures cast doubt on whether the respective documents were written and signed by the Petitioner. This doubt undermines the reliability and sufficiency of those documents, and of the remainder of the documents in the record. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition). Moreover, the document titled "Updated Personal Statement" contains numerous spelling and typographical errors, such as sentences beginning "n [sic] the year 2021," "he [sic] national average of earnings for small business owners," and a section title "C Cost of access to technology in the U.S.," not preceded by sections A and B. These spelling and typographical errors also undermine the reliability and sufficiency of the document titled "Updated Personal Statement," and of the remaining evidence offered in support of the petition. *See id.*

Additionally, even to the extent that the document titled "Proposed Endeavor Statement" may be reliable and sufficient, its statements regarding the publication of information for replication by others cannot establish eligibility. Specifically, the document indicates for the first time in the record that the Petitioner will "publish all the necessary information [on a particular website] including technical specifications of the resources used, software, and functional designs of the technology so that other professionals have access and can replicate it in other cities." However, as noted above, at the time of filing, the record did not indicate the Petitioner would publish information regarding his endeavor for others to replicate. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Whether the Petitioner would publish information regarding his endeavor for others to replicate is material because it addresses the scope of the endeavor, which is a factor in whether the proposed endeavor may have national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 888-90. Therefore, the document titled "Proposed Endeavor Statement" presents a new set of material facts that did not exist at the time of filing, which cannot

establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249; *Matter of Izummi*, 22 I&N Dec. at 176.

The Director acknowledged that "the [Petitioner's] proposed endeavor in the U.S. has substantial merit." The Director also noted information in the record; however, the Director observed that the Petitioner "has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation," referencing the first *Dhanasar* prong. *Matter of Dhanasar*, 26 I&N Dec. at 888-90. The Director also observed that the Petitioner "has not established that his proposed endeavor has implications beyond his current employer (or prospective employer), their business partners, alliances, and/or clients/customers and his prospective co-workers/employees or workplace at a level sufficient to demonstrate the national importance of his endeavor." Ultimately, the Director concluded that "[the Petitioner] has not established that the proposed endeavor is of national importance." The Director also concluded that the record did not satisfy the second and third *Dhanasar* prongs. *See id.* at 888-91.

On appeal, the Petitioner reasserts that the documents identified as personal statements and the "Proposed Endeavor Statement," discussed above, establish the proposed endeavor has national importance, as required by the first *Dhanasar* prong. The Petitioner also reasserts that "no less than 9 pieces of objective, documentary evidence with the initial filing speaking to the national importance of the Petitioner's specific proposed endeavor of providing sustainable software development services to small businesses" and "17 pieces of objective evidence from reputable US government and private sectors speaking to the inherent benefits of furthering the digital transformation of minority owned small businesses in the U.S.," submitted in response to the Director's RFE, satisfy the first *Dhanasar* prong.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note, again, that the documents identified as personal statements and the "Proposed Endeavor Statement" bear fuzzy, pixelated images of signatures and numerous spelling and typographical errors that cast doubt on whether they were written and signed by the Petitioner. This doubt undermines the reliability and sufficiency of the personal statements, and of the remainder of the documents in the record, as discussed above. *See Matter of Ho*, 19 I&N Dec. at 591.

Additionally, even to the extent that the documents identified as personal statements and the "Proposed Endeavor Statement" may be reliable and sufficient in general, they do not provide sufficient information regarding the proposed endeavor to determine whether it may have national importance. The record does not establish details about the proposed endeavor, such as how many U.S. workers the Petitioner's proposed endeavor may employ, if any; the location(s) in which those unspecified

workers may work; the duties those workers would perform; the wages those workers would receive; and other information that may assist in determining whether the proposed endeavor has "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 889-90. We note that the document identified as a "Proposed Endeavor Statement," submitted in response to the Director's RFE, described the Petitioner's potential clients as "small business owners belonging to the Hispanic community." However, it does not elaborate on those clients and how their use of the Petitioner's services may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* We also acknowledge that the documents identified as personal statements and the "Proposed Endeavor Statement" provide generalized information regarding the information technology industry, its customers, and its workforce. However, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889.

Relatedly, the Petitioner's own discussion on appeal of the "9 pieces of objective, documentary evidence with the initial filing" emphasizes how that evidence does not satisfy the first *Dhanasar* prong. The Petitioner enumerates various publications submitted at the time of filing, including a "US Chamber article [sic] of how technology enables small businesses, a Deloitte article explaining technology trends and how it contributes to small businesses, a Forbes article detailing how SMEs implement technology to level the playing field and recover for the effects of the pandemic," and similar documents. The publications submitted at the time of filing and the "17 pieces of objective evidence from reputable US government and private sectors speaking to the inherent benefits of furthering the digital transformation of minority owned small businesses in the U.S.," submitted in response to the Director's RFE and addressed by the Petitioner on appeal, do not discuss the Petitioner. They also do not discuss the specific endeavor the Petitioner proposes to undertake and how the proposed endeavor may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. As addressed above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889.

We further note that the Petitioner submitted other documents in response to the Director's RFE that cannot establish eligibility, such as a project document identifying the Petitioner as its author, dated April 2023, and letters of interest from potential clients dated March and April 2023. The project document and letters of interest, each dated after the Form I-140 filing date, present a new set of facts that did not exist at the time of filing and, therefore, cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249; *Matter of Izummi*, 22 I&N Dec. at 176. Moreover, even if the project document and letters of interest could establish eligibility—which they cannot—they do not establish how the proposed endeavor may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential

to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 889-90.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.