U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31461226

Date: JUL. 05, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as 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 Texas Service Center denied the petition, concluding that 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;

[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).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualified for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under *Dhanasar's* first prong.[2] Upon de novo review, we agree.[3]

On appeal, the Petitioner asserts that the decision "contains numerous erroneous conclusions of both law and fact." He contends, among other things, that the Director overlooked evidence in the record that "conclusively" established the national importance of his endeavor. In his professional plan, the Petitioner states he will work as an IT specialist and "offer [his] vast experience in storage administration, as well as disaster and recovery solutions, network management, and systems administration, specifically in developing standards and guidelines for using software and to protect vulnerable information." He will also "identify, investigate, and resolve database performance issues, database capacity, and database scalability, and implement security measures to safeguard computer systems."

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. In determining national importance, we consider its potential prospective impact. *Id.*

Here, the Petitioner places considerable emphasis on his professional experience and skills to support his endeavor's purported impact. He submitted evidence of his credentials and accomplishments, including certificates of recognition, team pictures, and letters of appreciation and support from former work colleagues. He points to his employment history and claims the evidence shows the "palpable broader implications" of his endeavor. However, a petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue under the first prong is whether a petitioner has demonstrated the national importance of the proposed work's prospective impact. While the evidence does reflect a high regard for the Petitioner and his work, they do not offer any specific, persuasive detail regarding the Petitioner's proposed endeavor or how the endeavor's impact would have broader implications extending beyond the companies and clients that he will serve. Rather, the

[2] The Petitioner claims he satisfied *Dhanasar's* second prong because the Director did not raise any concerns regarding this issue in her decision. This is incorrect. The Director concluded that the Petitioner had not established eligibility under *Dhanasar's* first prong, which was dispositive. Therefore, it was unnecessary for her to reach the remaining two prongs. *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."); *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] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

evidence speaks to whether the Petitioner is well-positioned to advance his proposed endeavor under *Dhanasar's* second prong and is not probative of the Petitioner's eligibility under *Dhanasar's* first prong.

The Petitioner also contends that "[t]he evidence clearly illustrates that his results are widely disseminated among professionals in the field, establishing him as a distinguished IT Specialist." He claims such broader implications align with *Dhanasar's* requirement that an endeavor have a significant potential to employ U.S. workers or have other substantial positive economic effects. Yet, the Petitioner does not offer specific evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work. While any basic business activity has the potential to positively impact the economy, the record does not demonstrate how working as an IT specialist—the specific endeavor proposed here—generates such significant economic activity that it rises to the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.*

The Petitioner does not explain, for example, how his IT services are distinguishable from those of other IT specialists, or how providing services for an individual company would have broader implications in the industry and extend beyond his immediate employer and its clients to have regional or national impacts, as he claims. For instance, his professional plan states that he will, among other duties: plan, implement, and manage high availability storage area network (SAN) storage, mirror and replicate data, monitor performance, and tune storage systems; develop standards and guidelines for use and acquisition of software; assist companies in determining their storage and hardware needs; plan, coordinate, and implement security measures to safeguard information in storage systems; and administer and manage computer networks. While he claims the evidence shows his work's "profound impact on industry and economic growth," the activities described in his professional plan describe the typical duties of an IT professional and do not adequately show that the Petitioner's specific proposed endeavor would have such broader impact that it would rise to the level of national importance.

Without adequate evidence demonstrating any specific U.S. economic impact, job creation, or other significant economic activity directly attributable to his future work, the Petitioner's appellate claims that the evidence "incontrovertibly establishes the transformative impact" of the proposed endeavor on the U.S. economy is unavailing. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also asserts that his endeavor is nationally important because it is in alignment with a profession of national significance. He emphasizes his expertise in IT systems, particularly big data, which he claims is a "crucial driver for innovation, improved products, services, and operations. However, 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 specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. While we acknowledge the value of IT services and big data to the technology industry generally, simply working in an important field is insufficient to establish the proposed endeavor's national importance.

We are likewise unpersuaded by the Petitioner's claim that his proposed endeavor has national importance due to a growing "talent shortage" in the IT industry.[4] The record contains insufficient evidence that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Because the Petitioner has not established through sufficient evidence in the record that his proposed endeavor meets the first prong of the *Dhanasar* framework, he has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues concerning whether he has established eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We, therefore, conclude that the Petitioner 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] Contrary to the Petitioner's assertion, the Director did not state that the Petitioner's profession lacked national demand.