U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31474225

Date: JUL. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a data-integration consultant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 the Petitioner's eligibility for the requested 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 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 for the underlying EB-2 classification, 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, 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:

[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v. Garland,* 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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.

II. ANALYSIS

The Director determined that the Petitioner qualified as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework, and we will dismiss the appeal.

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Director's decision was silent as to whether the Petitioner's proposed endeavor, to provide data integration consultancy services to legal entities across various industries, was of substantial merit,[2] but found it did not rise to the level of national importance as contemplated in *Dhanasar*.

Specifically, the Director concluded that the Petitioner, who submitted reference letters and a business plan with his initial filing, did not demonstrate that his proposed endeavor would extend beyond his company and customers to impact his field more broadly. The Director asserts further that the record did not show the proposed endeavor would impact the country regionally or nationally at a level consistent with national importance, have significant potential to employ workers in the United States, or otherwise have a substantial positive economic effect on the country.

Upon de novo review, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor would have national importance. In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *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

On appeal, the Petitioner submits his resume, his business plan, and two articles regarding the U.S. oil and gas industry. He asserts that the Director erroneously emphasized the lack of geographical breadth

[2] As the issue of national importance is dispositive, we will not decide the issue of whether the proposed endeavor is of substantial merit. We also acknowledge that the Petitioner indicates on appeal that the Director found his proposed endeavor to be of substantial merit. Upon a close reading of the Director's decision, we do not agree.

of his endeavor and the number of potential employees as absolute criteria for national importance instead of looking to the endeavor's potential impact, even if that impact is limited to one geographical area. The Petitioner asserts further that the Director did not consider other criteria, specifically "national initiative," for establishing national importance and did not establish how each national importance criteria is taken into consideration or weighted by the evaluator.[3]

First, the national importance criteria as described in *Dhanasar* are considered both individually and cumulatively. A Petitioner's proposed endeavor can rise to the level of national importance through establishing one or more of the criteria, however, in any given set of facts the totality of the evidence must show by a preponderance (more likely than not) that the proposed endeavor is of national importance.

Here, the Petitioner indicates his consultancy business will be based in Florida and eventually expand nationally through regional branches. He explains how he plans to consult and advise legal entities across various industries, including: oil and gas, manufacturing, construction, and biotechnology. He asserts that his company's services will enhance operational efficiency and boost innovation within these industries. The Petitioner also explains how his proposed endeavor will address the national need or initiative to develop small and medium-sized businesses who are growth-oriented. In his business plan, the Petitioner states that he will employ 9 employees in five years and have sales of approximately $720,000. Notably, regardless of geographic breadth, this level of sales is a very small portion of the Petitioner's total estimated market value of the consulting industry in the United States-which he states is 329 billion dollars. Thus, considering the potential impact of the Petitioner's proposed endeavor, based on the projections he provides, the record does not establish his endeavor would have a broad national impact on the consulting industry. Furthermore, the Petitioner does not provide the detail and specificity needed, with supporting documentation, to show how his consulting services would impact small and medium sized companies to have an impact nationally. Likewise, the record does not contain evidence to show how his consulting services would bring operational efficiency and innovations to the industries he serves in such a broad manner as to have a national impact, nor does it show what substantial economic benefits 9 new jobs would have on the country or in the region where he proposes to operate. For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they

[3] On appeal, the Petitioner also asks that his accompanying applications for immigration benefits (Forms I-485, I-765, and I-131) remain pending until his appeal is decided, however the decision on these applications is not currently in the jurisdiction of the AAO.

reached"); *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).

ORDER: The appeal is dismissed.