U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31652248

Date: JUL. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and 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 Petitioner did not establish that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

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. Next, a petitioner 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:

- 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.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner emphasizes throughout this proceeding that he has more than 10 years of experience in the information technology (IT) field, as well as a relating college degree. He plans to direct and oversee the operations of his company, C-, as its CEO and "technical leader." He indicated that his company "will provide end-to-end digital transformation services, including cloud infrastructure, unified communication and collaboration, network architecture and security, server, and storage solutions."

Before the Director, the Petitioner submitted a variety of documentation, including evidence of his education and experience, statements describing his proposed endeavor and claimed eligibility for a national interest waiver, a business plan, recommendation and support letters, and an expert opinion letter. He also submitted industry reports and articles, discussing the challenges and opportunities faced in the IT industry, the benefits of STEM-related employment and the important role of immigrant entrepreneurs on the U.S. economy. He suggests, among other things, that "as a new business, [C- will] create new jobs, generate taxes, impacting and helping the economy, thus it is reasonable to conclude the endeavor does have broader implications, beyond the business itself and its clientele and employees."

The first prong relates to the substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director determined that the Petitioner's endeavor - operating his own IT consulting business has substantial merit, but that he did not satisfy the national importance requirement.[2] On appeal, the Petitioner submits a brief and relies on the evidence submitted to the Director which they reviewed and considered in denying the petition. For the following reasons, we agree that the Petitioner has not established the national importance of his endeavor. While we may not discuss every document in the record, we have reviewed and considered each one.

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 *Dhanasar*, we

[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).

[2] The Director also concluded that though the Petitioner met the second *Dhanasar* prong, he did not meet the third *Dhanasar* prong.

further noted that "we look for broader implications" of the proposed endeavor and 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 points to the evidence in the record about U.S. government initiatives, and the importance of entrepreneurship and STEM employment in the United States, asserting that his business will operate in "STEM fields, IT, and software engineering," and these "government initiatives, and statements from key [government] officials emphasize the national importance of such endeavors, aligning with the broader goals related to economic growth, innovation and job creation." When 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 "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. Much of the Petitioner's evidence relates to the importance of current software and infrastructure development practices in the IT industry, STEM employment, and entrepreneurship generally, rather than the importance of his specific proposed endeavor to our nation.

It is important to note that being employed in a STEM field does not automatically show eligibility for a national interest waiver. Specifically, the STEM endeavor must have *both* substantial merit and national importance in respect to the first prong of *Dhanasar*. *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. Here, the Petitioner has shown the former, but not the latter. Collectively considering the articles, reports, and IT industry statistics, we conclude that they do not sufficiently support a finding that his specific proposed endeavor has national importance.

On appeal the Petitioner points to his business plan to support the national importance of his proposed endeavor, referencing his projections for C-'s prospective tax payments and asserts that his company will pay over $74,000 in taxes in in its first year of business and $970,000 in its fifth year. The business plan also suggests that his business will create 60 jobs by the end of year five; and offers a forecast of the net sales for his business of over $500,000 in its first year and $5,000,000 in its fifth year. But the basis for these projections is not sufficiently supported in the record. Additionally, while he indicates that the impact of the software and infrastructure products that he will develop and market to clients in the United States will be far reaching, the evidence does not adequately explain how his products will differ from or improve upon those readily available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's IT development strategies will reach beyond benefitting his own company and its clients or will have broader implications within the IT field or on his target market – small and medium sized companies conducting business in the United States.

The Petitioner also reiterates on appeal that his "endeavor will create ripples of positive economic effects," asserting that his application of the U.S. Bureau of Economic Analysis' Regional Input-Output Modeling System (RIMS II) indicates that his "company will be responsible for the direct and indirect creation of more than 207 jobs. The Petitioner appears to have relied on his aforementioned "net sales forecast" as the inputs into the RIMS II model. Here, the Petitioner has not substantiated the basis for his net sales forecasts, or for the prospective financial metrics included in his business plan with sufficient independent, objective evidence.

Additionally, the Petitioner does not elaborate on the indirect jobs the RIMS II calculation anticipates his company will create, such as a breakdown of part-time versus full-time positions, and where they would be created. Without more detailed, credible evidence of the types of jobs that would be created and where the jobs would be located, the record does not establish that employing the positions listed in the business plan would show the type of substantial positive economic effects, particularly in an economically depressed area, contemplated by the first *Dhanasar* prong. *See id.* at 889-90. As such, we will not further consider the tenuous, indirect consequences of a petitioner's activity when determining whether it is of national importance. *Id.*

The Petitioner also references an expert opinion prepared by Dr. H- of [redacted] which the Director considered and discussed in denying the petition. Dr. H- praises the Petitioner's education, experience, past success, personal qualities, and the results he achieved and opines "[the Petitioner] with extensive experience in the Information Technology sector, can render services to companies in the United States." However, these qualities relate to the second prong of the *Dhanasar* framework, that the individual is well-positioned to advance their proposed endeavor, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar's* first prong.

Importantly, Dr. H- does not specifically explain how the Petitioner, through his proposed endeavor will have a significant prospective impact on the United States, including the national or global implications of his software and infrastructure products, its potential to employ U.S. workers, or through other positive economic effects. The information offered in Dr. H-'s letter is largely limited to general observations about the Petitioner's qualifications and the industries in which he will work. For instance, he provides narrative about the services provided by individuals employed in the cybersecurity industry, noting for instance: "[c]ybersecurity is essential for small and midsize enterprises (SMEs) in the United States to protect against cyber threats, which can result in financial losses, reputational damage, and legal liability." He notes that the "digital transformation services offered by C- can have a positive impact on cybersecurity." However, he does not distinguish the benefits of the cybersecurity services that C- will provide to U.S. companies relative to those currently offered by other U.S. businesses specializing in this field.

Within the opinion letter Dr. H- incorporates wide swaths of the Petitioner's own assertions about the importance of his company's services which appear in other documentation in the record, such as the Petitioner's briefs that were submitted to the Director. But he does not offer an analytical roadmap that adequately lays out the basis for his opinion that the Petitioner meets the national importance aspect of *Dhanasar's* first prong. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* For the sake of brevity, we will not address other deficiencies within Dr. H-'s analyses.

Similarly, the Petitioner has provided reference letters from former colleagues who outline his work accomplishments and describe how the Petitioner has provided beneficial services to the companies that employed him. For example, P-, a former coworker in a company that employed the Petitioner, discusses work projects in which the Petitioner was involved, noting:

> [The Petitioner] joined my team at [] in 2014 as a senior software engineer, working in cloud service developing in JAVA. I was his technical leader. After a couple of years, he joined my team at [], in 2020 as technical leader. He did a great job and was able to move many projects forward and contributed a lot in project and people management. He then got promoted to software development manager as my peer in the same project.

P- discussed the Petitioner's specific areas of responsibility, indicating among other things that he "has a great practice in managing software engineering services, being an admirable leader and a dedicated coworker." He averred "I definitely recommend [the Petitioner] to any future endeavor, be it nationally or abroad. He is a highly qualified professional and will most definitely be able to provide excellent results in the United States." While P-, along with the other letter writers discuss his IT capabilities and experience, and appear to hold the Petitioner in high regard, the submitted letters do not provide sufficient clarity regarding the national importance of the specific endeavor that the Petitioner will focus on should this petition be approved. Generalized conclusory statements that do not identify specific [prospective] contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.,* 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters [to] determine whether they support the petitioner's eligibility. *Id.* Therefore, we conclude that the reference letters in the record offer little insight to the matter at hand.

It is the Petitioner's burden to prove by a preponderance of evidence that he is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* Here, the record does not establish that his proposed endeavor stands to substantially impact the field at a level commensurate with national importance. *Dhanasar* at 890.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver. Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.