U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31455438

Date: JUL. 16, 2024

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 a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 qualified for classification as a member of the professions holding an advanced degree, but that he 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.

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. If 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," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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. *Id.*

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

The Director found that the Petitioner qualifies as 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.

As a preliminary matter, the Petitioner asserts that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, to [his] detriment." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe, 25 I&N Dec. at 375; see also Matter of Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965).* Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See* 1 *USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for the EB-2 classification and a national interest waiver, he does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

With respect to his proposed endeavor, the Petitioner initially indicated that it is "based on the intention of owning and operating a business providing Business Intelligence (BI) services through [Database Management, Customer Relationship Management, Enterprise Resource Planning, Robotic Process Automation, Machine Learning and Artificial Intelligence] tools, including Data Science and general data analysis." The Petitioner explained that he intends to operate a Florida-based business in the [redacted] region, "serving segments of food retail, telephone companies, logistics (airlines) and the beer industry, including new sectors whenever there is demand."

In response to the Director's request for evidence (RFE), the Petitioner stated that his proposed endeavor would "move an entire economic chain, creating job opportunities for Americans and also collaborating to achieve national goals" and that his endeavor will "contribute to the current and future STEM workforce." In addition, the Petitioner submitted the business plan for his company. This business plan includes industry and market analyses, information about the company and its services, financial forecasts and projections, its social and environmental impacts, a discussion of the Petitioner's education and work experience, and a description of company personnel. The Director concluded that, although the Petitioner had established the substantial merit of the proposed endeavor, he had not demonstrated its national importance, that he is well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

On appeal, the Petitioner asserts that he has established the national importance of the proposed endeavor, that he is well-positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. We do not discuss each piece of the evidence in the record individually but have reviewed and considered the totality of the record. The first prong of *Dhanasar*, substantial merit

and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. In *Dhanasar*, we 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 determined in *Dhanasar* 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. 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 contends that the Director's denial did not adequately consider his resume, letters of recommendation, evidence of his work in the field, and industry articles in the record. Upon review, the Petitioner's resume details his skills and prior work in the field. The letters of recommendation in the record generally describe the Petitioner's technical skills and his prior experience in the field of business intelligence, as well as his ability to manage large business intelligence projects. Regarding the Petitioner's self-authored industry articles on various technical aspects of business intelligence, while he claims on appeal that these articles demonstrate the national importance of his endeavor, the Petitioner does not offer evidence to support this contention. Rather, these articles appear to demonstrate the Petitioner's knowledge of the technical aspects of business intelligence. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

In his appeal brief, the Petitioner argues that he "will be addressing an industry shortage, which cannot be addressed by the U.S. workers as demand exceeds supply." We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of workers in his field. In the business plan, the Petitioner cites to employment statistics for the United States and for Florida to demonstrate the robust demand for data scientists and business intelligence analysts. The Petitioner asserts that his proposed endeavor would provide jobs to satisfy demand in this field in the United States. However, the Petitioner has not established that his proposed endeavor stands to 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.

The Petitioner further asserts on appeal that his proposed Business Intelligence company service "is poised to contribute significantly to economic resilience, job creation, and the advancement of critical technologies" and that the business plan for this proposed endeavor "allows concrete projections of the benefits he may offer to the U.S." Regarding future staffing, the Petitioner's business plan anticipates that the company will initially employ 13 personnel but does not elaborate on this projection. Furthermore, the plan offers revenue projections of $1,347,840 in year one, $1,572,480 in year two, $1,797,120 in year three, $2,021,760 in year four, and $8,985,600 in year five. The Petitioner contends that his proposed endeavor will create 12 additional direct jobs, and an additional 55.9 indirect and induced jobs. He also cites to U.S. Census Bureau data on poverty rates for other regions in Florida, noting that they are economically depressed areas and contends the proposed endeavor "may" positively impact the entire state of Florida. However, the job creation estimates, and

the projected benefits to economically depressed areas, are based upon projections which are not supported by details showing their basis or an explanation of how they will be achieved. The Petitioner therefore has not shown 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. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida or the United States a substantial economic benefit through employment levels or business activity.

Further, the Petitioner has not provided evidence demonstrating that his proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Additionally, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his industry or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

The Petitioner also claims on appeal that the national importance of his proposed endeavor is substantiated, in part, by its focus on areas identified in federal initiatives "to spur research and innovation in emerging technologies;" its contribution to "sustainability and climate mitigation strategies through the inclusion of "sustainability-related software within the services offered;" and in its emphasis on cybersecurity. He further argues that his proposed endeavor's "pledge to contribute to the local labor market" also supports its 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 his work. While the Petitioner's statements reflect his intention to provide business intelligence services in a manner that will achieve these claims, he has not offered sufficient information and evidence to establish that the proposed endeavor will do so, or to demonstrate how, if achieved, these goals would impact the field of business intelligence. Similarly, he has not offered sufficient information and evidence to demonstrate that the prospective impact of providing business intelligence services to his clients would impact the field of business intelligence such that it rises to the level of national importance. 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, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field or the U.S. economy more broadly at a level commensurate with national importance.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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"); *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, 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.