U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31929938

Date: JULY 18, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in information technology and telecommunications, 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 Nebraska Service Center denied the Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the record established the Petitioner was a member of the professions holding an advanced degree or their equivalent, but did not establish that he was eligible for and merited a national interest waiver as a matter of discretion. 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. 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.

Id.

II. NATIONAL INTEREST WAIVER

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree or their equivalent as required for underlying EB-2 classification.[2] Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest under the *Dhanasar* framework.

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined that the Petitioner's proposed endeavor has substantial merit. We agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* 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." *Id.* In *Dhanasar*, we further stated that we consider the proposed endeavor's "potential prospective impact," and "look for broader implications" noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Further, "[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.

In support of his Form I-140, the Petitioner provided, in part, an executive plan reflecting his intention to create a company aiming to "fundamentally transform the telecommunications and edge cloud computing landscapes by providing bespoke consulting services and crafting innovative solutions tailored to the challenges unique to each client…." The Petitioner also submitted several articles generally describing the importance and impact of the telecommunications and cloud computing

[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 is discretionary in nature).

[2] We acknowledge that the Director later contradicts this conclusion stating that the Petitioner had "not established by means of an advanced degree or through exceptional ability that [they are] eligible for the second preference classification." However, because the Director continued to determine whether the Petitioner merited a national interest waiver, we consider this contradiction to be harmless error that did not materially affect the Director's decision.

industries in the United States. The Petitioner additionally submitted an expert opinion letter that reproduced from the Petitioner's executive plan a description of the proposed endeavor and services the endeavor aimed to offer and generally discussed the importance of and benefits derived from the telecommunications and cloud computing industries in the United States.

While we acknowledge the Petitioner's education and experience in the field of telecommunications and cloud computing and the overall impact these fields have on the economy of the United States, our focus is on the specific endeavor that the Petitioner proposes to undertake rather than the importance of the industry or profession in which the individual will work. *See id.* at 889. Here, the Petitioner has not offered sufficient information and evidence to demonstrate the bespoke consulting services and tailored solutions unique to each client that he intends to provide through his company would extend beyond his specific clientele. Furthermore, while he asserts that he will fundamentally transform the telecommunications and edge cloud computing landscapes, he does not sufficiently explain or demonstrate how the specific work he proposes to undertake offers original innovations to advance, or otherwise has wider implications in, the telecommunications and cloud computing fields.[3]

Similarly, while the Petitioner generally claims that his proposed endeavor will create full-time jobs, the record is insufficient to establish his proposed endeavor has significant potential to employ U.S. workers or has other substantial positive economic effects. *See id.* Initially, we note that while the Petitioner claims he will hire 24 full-time jobs in "Year 1," he does not account for the cost of these jobs in his financial forecast and does not otherwise provide sufficient corroborating evidence to establish significant potential to make these hires. And while we are not dismissive of the potential contributions the Petitioner's company would have to the U.S. economy, evidence provided by the Petitioner reflects that in 2017 cloud computing contributed $214 billion to the U.S. gross domestic product and added 2.15 million jobs, and that 5G within the telecommunications industry is expected to create 4.6 million jobs in the next 15 years (as of 2023). Thus, even assuming the Petitioner's projections to have accumulated approximately $1 million in revenue and have hired 75 full-time workers at the end of "Year 5" are accurate, the projections, while positive, do not sufficiently establish *substantial* positive economic effects when compared to the overall industry. Accordingly, we find the Petitioner has not established that his proposed endeavor is nationally important.

[3] For instance, the Petitioner does not sufficiently differentiate the services, such as "Edge Cloud and Telco Infrastructure Build" and "5G Virtual Function Onboarding," that his company would provide with those already provided by other companies such that they would be deemed to have broader implications in the field. *See, e.g.*, [redacted] https://www[redacted]/us/en/solutions/telco-cloud.html (last visited July 18, 2024) (claiming [redacted] products make telco and edge clouds that deliver 5G services easy to design, deploy and operate); Microsoft, https://azure.microsoft.com/en-us/resources/cloud-computing-dictionary/what-is-edge-computing (last visited July 18, 2024) (listing the edge cloud computing services offered by Microsoft); T-Mobile, https://www.t-mobile.com/news/business/t-mobile-and-google-cloud-join-5g-advanced-network-solutions (last visited July 18, 2024) (explaining that T-Mobile and Google are combining 5G and edge computing); Cisco, https://www.cisco.com/c/en/us/solutions/service-provider/telco-cloud.html (last visited July 18, 2024) (describing the availability of telco cloud solutions through Cisco). And while we recognize that "Network Health Monitoring" and "24x7 Support" may not be the most prominent of his company's offered services, the Petitioner does not sufficiently describe how these services would have national implications in the telecommunications or cloud computing fields.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, requiring that he demonstrate his proposed endeavor is nationally important. We therefore conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. We note that the Director also concluded that the Petitioner did not establish he was well positioned to advance his proposed endeavor, or that on balance it would not be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. While the Petitioner contests these conclusions on appeal, since our determination that the Petitioner's proposed endeavor is not nationally important is dispositive to our decision, we decline to reach and hereby reserve the appellate arguments on these issues. *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).

ORDER: The appeal is dismissed.