U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31318523

Date: JUL. 18, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an electronic and civil engineer, 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 petition, concluding that the Petitioner had not established eligibility for 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. 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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. The Director concluded the record did not establish that the proposed endeavor of providing information technology consulting services has national importance, as required under the first prong of *Dhanasar*. After a careful review of the entire record, we agree.

At the time of filing, the Petitioner submitted a "proposed endeavor" statement proposing to offer "Information Technology (IT) consulting services specialized in the implementation of cutting-edge technology for U.S. small businesses." In response to a request for evidence (RFE), the Petitioner submitted an updated "proposed endeavor statement," an updated "personal statement," and business plan indicating that he intends to serve as the chief executive officer for a new information technology consulting company. The company, [redacted], will be based in [redacted] California, targeting small and medium-sized enterprises (SMEs). The Petitioner stated that the company's contributions will include:

- minimize the barriers to technological development and advancements for startups and SMEs;
- support SMEs that are foundational to broader economic development;
- fulfill the increasing demand for software consulting services in the U.S.; and
- support the economy and technological competitiveness by ameliorating a shortage of STEM professionals nationwide.

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 determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director determined that although the proposed endeavor had substantial merit, the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that his proposed endeavor would have significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, would have broader implications for the Petitioner's field, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework. On appeal, the Petitioner submits a brief which contends that the previously submitted evidence in the record demonstrated that the Petitioner meets all three prongs under the *Dhanasar* framework and merits a discretionary waiver of the job offer, and thus the labor certification, in the national interest.

The Petitioner cites to articles and reports discussing a wide variety of topics including industry trends in the information technology industry and the value of SMEs as drivers of U.S. new business growth. This evidence supports the Director's determination that the Petitioner's proposed work as a business owner and chief operating executive in the information technology consulting services sector has substantial merit. The matter here is not whether these topics of information technology, digital transformation, artificial intelligence, software consulting, or similarly related subjects, are nationally important. In evaluating 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" and its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. General claims about the growth of the information technology services industry and the importance of SMEs in the United States do not help establish that the Petitioner's specific endeavor has the potential to impact the U.S. economy, or the information technology industry on a scale commensurate with national importance. Therefore, while we recognize the role of information technology consultants in assisting businesses to automate their operations, achieve digital transformation, improve service delivery, and improve their market competitiveness, the Petitioner's intent to work in this field alone is not sufficient to establish the national importance of his specific proposed endeavor.

The evidence does not demonstrate that the Petitioner's specific undertaking stands to have an impact beyond the organization and clients he would serve, or that his proposed work would otherwise have broader implications for the information technology industry or initiatives. 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. In *Dhanasar*, we determined 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, the record does not show through supporting documentation how his specific company that provides information technology consulting services stands to sufficiently extend beyond his prospective clients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. For example, he does not claim, and the record does not establish, that he plans to introduce novel methodologies or technological advancements that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulate how he will contribute to research and development of our nation's information technology field.

The Petitioner also contends that his endeavor falls within a STEM (science, technology, engineering, or mathematics) profession. With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.[2] Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. Here, the Petitioner has not shown that his endeavor aims to advance STEM technologies and research or has broad implications rather than providing his limited professional services by working within a STEM profession.

[2] *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual.

The evidence and argument the Petitioner introduced into the record does not help him carry his burdens of production and persuasion. In support of his claim that he can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner provided a personal professional statement, a national importance statement, a proposed endeavor statement, letters of recommendation, and a business plan for his proposed company.[3] The letters of recommendation containing testimonials of the services the Petitioner performed do not describe how the benefits they have received connect to broader implications rising to national importance or any nationally important economic impact. The Petitioner also submitted an expert opinion letter from Dr. [redacted], a professor of computer science and information systems at [redacted]. USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor. In addressing the first prong of the *Dhanasar* framework, the author describes the U.S. information technology industry and its importance on small businesses and the U.S. economy. It describes how the information technology industry supports national initiatives, and that the Petitioner's experience makes him capable to provide information technology consulting services to small businesses. Instead of focusing on the Petitioner's specific proposed endeavor having a prospective impact in the field of information technology, the opinion focuses on the importance of the industry and how the Petitioner's experience as an information technology consultant would be beneficial to the United States. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work. The letter does not contain sufficient information and explanation of the Petitioner's proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work in information technology offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

Further, the Petitioner has not demonstrated 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. The Petitioner provided a business plan that includes industry and market analyses, financial forecasts and projections, and a description of his information technology consulting company's proposed services and staffing. The business plan projects that the company would hire 15 full-time employees and 16 independent contractors in the first five years of operations and generate cumulative revenues of $6.987 million by the end of its fifth year. However, the plan does not provide sufficient detail of the basis for these projections, or adequately explain how these sales and staffing targets will be realized. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Additionally, the record does not support that the direct creation of 15 additional jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

[3] While we do not discuss each piece of evidence, we have reviewed and considered each one.

While the Petitioner submitted industry data showing that the information technology services industry is a high growth sector and a significant contributor to the U.S. economy, he has not demonstrated how a business that expects to hire 15 employees and generate $6.987 million over five years will have substantial positive economic effects on this sector, which, according to a submitted overview of the industry, has an estimated direct economic impact of $2 trillion on the national economy and employs over 9.1 million workers.

The Petitioner asserts that his proposed endeavor "aligns with the locations of some of the underprivileged areas and communities that have high poverty rates and are considered to be in Historically Underutilized Zones (HUBZone)" and will "seek to serve and generate direct and indirect employment opportunities in underserved communities." However, the Petitioner has not offered sufficient evidence that his business will be located in a HUBZone. Further, he did not indicate that his endeavor would participate in the HUBZone program or that it would be eligible to do so.[4] While it appears that the Petitioner may have intended to equate a designated HUBZone with an "economically depressed area," the record does not support a conclusion that this is an equitable comparison. The Petitioner has not otherwise claimed or provided evidence that the area where his company will operate is economically depressed, that it would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue. While the intention is meritorious, the Petitioner has not provided corroborating evidence to support these claims. The Petitioner's claims of his proposed endeavor's economic impact have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide these benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376.

For the reasons discussed, the Petitioner has not met his burden to establish that he meets the first prong of the *Dhanasar* national interest framework. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments concerning eligibility under the remaining *Dhanasar* prongs. *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 alternate 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, we conclude that 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.

ORDER: The appeal is dismissed.

[4] Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3 % of federal contract dollars to HUB Zone-certified companies annually. *See* "HUBZone Program," https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone program.