U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31652482

Date: JULY 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an IT professional, 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 although the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, 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 qualify for the underlying EB-2 visa classification, a petitioner must establish that 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 a 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

As stated, the Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The only issue on appeal, therefore, is whether the Petitioner has met his burden of proof to establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Upon review, we conclude that he has not met this burden.

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

In his initial business plan, the Petitioner stated that he intends to launch and manage a specialized IT consultancy firm in Delaware, which will not only provide expert design consultancy services focused on key domains like human-computer interaction (HCI), user experience design (UX), and user interface design (UI), but will also offer specialized training for designers looking to start working or transition within the IT technology sector. He specified that he would hire and train local talent, and that his company would provide services for clients in the United States and abroad through online consultations. The Petitioner indicated that his services would help small and medium-sized companies improve their performance using IT technologies, and that economic implications of such services would be profound because the resulting operational cost-effectiveness would translate to higher profitability, thus benefitting the U.S. economy on a macro level. He further stated that the projected growth trajectory of his firm, which he intends to expand to Florida and California, implies potential job creation in the ever-growing U.S. IT sector. In support, he presented an expert opinion and several articles about technology's influence on consumers, and the importance of and demand for IT consultancy services.

The Director determined, in part, that the Petitioner's broad assertions were not sufficient to show that his specific proposed endeavor had national importance and asked him to provide additional evidence of its potential prospective impact to evaluate his eligibility for a national interest waiver under the *Dhanasar* framework.

The Petitioner's response included a copy of the U.S. Department of Homeland Security Science, Technology, Engineering, and Mathematics (STEM) Designated Degree Program List, and general

[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).

information about web developers, web and digital interface designers, and related occupations. He also submitted an updated business plan with additional information about his proposed endeavor. The Petitioner clarified that the main objective of his company "is to collaborate with web development professionals . . . to complete the full scope of web development projects, to communicate with issues affecting Web sites, to conduct user research to determine design requirements and analyze user feedback to improve design quality, and to confer with management or development teams to prioritize needs, resolve conflicts, develop content criteria, or choose solutions." He stated that his company "aims to positively impact national employment statistics, both directly and indirectly, resulting in increased tax payments and improvements to the overall U.S. economy." With respect to the endeavor's national importance, the Petitioner indicated that because he intends to offer custom software solutions and consulting services depending on the specific needs of his clients, his undertaking may potentially have significant broader impact on technology and startups; finance and banking; healthcare, retail and e-commerce; manufacturing and logistics; government and public sector; as well as non-profit and non-governmental organizations sector. He reiterated that his proposed endeavor also has significant potential to employ U.S. workers, as it "aims to create new employment opportunities for U.S. workers across various sectors, such as systems design, development and integration services, consulting, project management, and customer support." Lastly, the Petitioner indicated that his undertaking would enhance societal welfare because it would increase access to education by providing training to new interface designers and to those who are already working in the field and want to improve their skills.

In denying the petition, the Director determined, in part, that the Petitioner had not shown that his proposed endeavor as the CEO of his startup IT consultancy and training company had national importance. In particular, the Director found that the Petitioner did not present a viable plan and sufficient evidence for USCIS to conclude that his specific proposed endeavor stood to affect or advance IT technology, that it otherwise had broader implications in the field at a level commensurate with national importance, or that it would lead to the employment of a significant population of workers in the area or offer the region or its population a substantial economic benefit by increasing employment levels, business activity, trade, or related tax revenue.

The Petitioner asserts that the Director seemed to have primarily focused on "substantial economic effects" and overlooked crucial aspects related to his proposed endeavor's national importance, "such as the enhancement of social welfare, but especially its impacts on a matter that a government entity has described as having national importance or is the subject of national initiatives." He indicates generally that because his proposed undertaking "touches on at least one of the aspects that should be considered" when determining whether the *Dahnasar's* first prong has been satisfied, it is possible to conclude that his proposed endeavor has national importance. The Petitioner further states that the Director also erred by concluding that he did not present a viable plan to show that his endeavor was of national importance, because his business plan was complete and well-thought-out.

As stated, in evaluating whether an endeavor has national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake," and evidence of its "potential prospective impact." *See Dhanasar*, 26 I&N Dec. at 889. Accordingly, "we look for broader implications" of the proposed endeavor and consider whether "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field" or whether it

"has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

Here, the Petitioner's statements indicate that he intends to provide IT consulting services for small and medium-sized businesses as well as training for new and existing web designers. While we do not dispute that such services are valuable and in demand, the Petitioner has not offered adequate information and evidence to demonstrate that his proposed endeavor's impact on the field of information technology or web design will be significant enough to reach the level of national importance. We recognize the Petitioner's assertion that training new and existing interface designers and IT specialists has a potential to enhance societal welfare; however, the record as a whole remains insufficient to show that the benefits of his proposed endeavor, including any training opportunities, will extend beyond his own customers and employees to affect the IT industry more broadly. We also acknowledge the Petitioner's statement indicating that he disagrees with the Director's assessment of his business plan with regard to his endeavor's national importance; however, as he does not point to any specific factual or legal errors in the Director's analysis, we are unable to meaningfully address it.

Lastly, the Petitioner's assertion that the Director did not consider his proposed endeavor's "impacts on a matter that a government entity has described as having national importance or is the subject of national initiatives," appears to refer to the STEM Designated Degree Program List he previously provided, which includes information technology, computer graphics, as well as web page, digital/multimedia, and information resources design. However, pursuing an endeavor in a STEM field does not automatically establish eligibility for a national interest waiver. Rather, "[w]ith respect to the [*Dhanasar's*] first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance." *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual. 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. *See generally id.* On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *See generally id.* (referencing *Matter of Dhanasar*, 26 I&N Dec. at 893).

In this case, the Petitioner's proposed endeavor does not aim to advance STEM technologies and research but to provide IT consulting and web design services to other companies and offer training to individuals who are either working or may be interested in working as IT specialists or web designers. However, as the Petitioner has not adequately demonstrated that this specific endeavor has significant potential to employ U.S. workers or will otherwise have substantial positive economic effects for the United States, we cannot conclude that it meets the national importance requirement under the first prong of the *Dhanasar* precedent decision.

Consequently, as the preponderance of the evidence does not point to potential broader implications or substantial positive economic effects that will likely result from the services Petitioner proposes to offer through his IT consulting firm, the record does not establish that his proposed endeavor may be of national importance.

In conclusion, the Petitioner has not met his burden of proof to show that his proposed endeavor has national importance, as required under the first *Dhanasar* prong. Because he is ineligible for a national interest waiver on that basis alone, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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.