U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32980217

Date: JULY 31, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) project manager and entrepreneur, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish 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 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 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 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," *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 Petitioner submitted a business plan for a consulting, advisory and training business in project management focusing on information technology, implementation, and systems management. The plan states the business will be a limited liability company located in the [redacted] Florida metropolitan area.

The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

1. Substantial Merit

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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.* The Director determined the Petitioner established the substantial merit of his proposed endeavor. We agree.

2. National Importance

The Director concluded the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that his proposed endeavor would have substantial positive economic effects or a broader impact on his field outside of his prospective company and clients.

On appeal, the Petitioner claims the Director underestimated "the transformative economic impact" of the Petitioner's company, which his business plan shows is "poised to significantly catalyze local and national economic growth." The business plan projects the company will employ five individuals the first year increasing to 11 individuals in the fifth year and generate between 25 to 170 indirect jobs. The business plan discusses economically depressed areas in Florida and states "there are no strong obstacles to offering services and courses to the population of these regions," but does not indicate that it would employ any individuals in these regions. The business plan does not establish that the

projected direct employment of five to 11 people and indirect employment of 25 to 70 people shows a significant potential to employ United States workers in general or in an economically depressed area as the business plan states the management consulting industry in the United States generated 1,853,364 jobs in 2021. The business plan also forecasts earning a final profit of -$9,845 the first year increasing to $488,843 in the fifth year. This projected profit does not indicate a substantial positive economic effect in the Petitioner's field as the business plan states that in 2021 the management consulting industry in the United States generated $253.1 billion in revenue. *See id.* at 890 (discussing significant potential to employ United States workers and other substantial positive economic effects as indicative of national importance).

The Petitioner also asserts the Director overlooked "the strategic significance" of the Petitioner's proposed endeavor, which will foster economic growth through entrepreneurship in technology and cybersecurity and will resonate with federal strategies to secure the nation's technological interests and infrastructure. The Petitioner submitted copies of the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence and the 2022 National Security Strategy. However, our assessment of national importance does not focus on the importance of issues affecting a field in general, rather it "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The Petitioner has not established that his proposed endeavor would extend beyond his company's individual clients to impact these national interests more broadly. *See id.* (explaining "we look for broader implications").

The Petitioner claims his proposed endeavor also has national importance because it aligns with the federal government's support of science, technology, engineering and mathematics (STEM) education and workforce development. We recognize the importance of progress in STEM fields and the essential role that individuals with advanced STEM degrees have in fostering such progress. 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual/. However, "in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance." *Id.* Here, the Petitioner does not demonstrate how his proposed endeavor would impact STEM education and workforce development apart from his work for individual client businesses in a manner commensurate with national importance.

The Petitioner asserts the Director did not give due regard to industry reports and articles he submitted which demonstrate the national importance of his proposed endeavor. The Petitioner submitted articles on the rising demand for information managers, the importance of information and communication technology in project management, high demand for IT workers in 2022, rising demand for information managers, U.S. startups founded by immigrants, immigrants and workforce development, immigrants creating jobs, immigrant workforce supporting millions of U.S. jobs, the importance of information technology, 2023 IT industry outlook, and U.S. need for talent to retain technology leadership. These articles attest to the importance of IT and the contributions of immigrants to the U.S. workforce, but again, our assessment of national importance does not focus on the importance of issues affecting a field or our nation in general, rather it "focuses on the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. Here, none of the articles mention the Petitioner or address the potential prospective impact of his proposed endeavor. *See id.* (explaining we consider the proposed endeavor's potential prospective impact when assessing national importance).

The Petitioner also claims the Director did not adequately consider his letters of recommendation and evidence of his work in his field. The Petitioner submitted letters from colleagues praising his experience and skills and expressing confidence in his ability to succeed in the future. For example, M-J-M- praises the Petitioner's project management at [redacted] where he met deadlines and "delivered all components at a significantly lower cost." D-W- expresses gratitude for the Petitioner's project management supporting IT services for the [redacted] The Petitioner also submitted letters from individuals and businesses interested in hiring him to perform IT project management. While they attest to his significant achievements, skills and experience, the letters do not specifically address his proposed endeavor and any impact it would have in his field.

The Petitioner also submitted a letter from an expert expressing his opinion that the Petitioner qualifies for a national interest waiver. The expert states the Petitioner's proposed endeavor has national importance because his experience with the business environment and information technology services sector in Brazil would help U.S. companies doing or seeking to do business in Brazil, which is a "must play" market for U.S. multinational companies. In his business plan, the Petitioner states his company will concentrate its marketing on the [redacted] Florida area and does not discuss any intended focus on U.S. companies doing business in Brazil. The expert also does not specify how the Petitioner's work would extend beyond individual businesses to impact trade or other significant relations between Brazil and the United States. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

Letters from the Petitioner's colleagues and employers attest to his qualifications and contributions to the companies where he has worked, but do not discuss his proposed endeavor and any potential impact it would have on the field of IT project management. Their letters also do not indicate that the Petitioner's past or proposed accomplishments include any contributions to his field with national or even global implications. The Petitioner submitted an excerpt from a book he published entitled [redacted] He did not submit evidence that his book has been cited by other IT project management professionals or has otherwise significantly contributed to his field. *See id.* at 889 (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field).

The Petitioner has not established that his proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), would have other substantial positive economic effects, or national or even global implications within the field. 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, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company's clients to impact his field more broadly in a manner indicative of national importance.

C. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of the *Dhanasar* framework. *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).

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.