U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29546966

Date: JUNE 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computer software developer, seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability; however, the Director did not specify in the decision whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. The Director also concluded that the Petitioner 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 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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. *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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability; however, the Director did not specify in the decision whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act. Instead, the Director observed that, in a prior notice of intent to deny, the Director withdrew an earlier determination that the Petitioner qualified as a member of the professions holding an advanced degree. Nevertheless, the Director concluded that the record establishes the Petitioner has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning and that the Petitioner has at least 10 years of full-time experience in the occupation, as contemplated by the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(B). However, the Director did not address whether this evidence satisfies the advanced degree equivalency criteria at 8 C.F.R. § 204.5(k)(3)(i)(B), implementing section 203(b)(2) of the Act. Furthermore, the record does not clarify why the Director addressed whether the Petitioner may qualify for a national interest waiver if he was ineligible for second-preference classification, as the Director concluded.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* section 203(b)(2) of the Act; *see also 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"); *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).

The Petitioner described the endeavor as a plan to provide "software development and strategy services for any medical businesses who wish to use his . . . services, which would allow for direct and indirect employment and growth." More specifically, the Petitioner clarified that he would "focus on creating a panoramic image of the cornea cells to improve the accuracy of statistical information." The Petitioner stated that his optometric software would "impact the businesses of his future clients along

with the technological scope of medical software in general," and it would "help citizens recover faster." The Petitioner also summarized his qualifications and he provided copies of generalized information regarding software development, healthcare, and business.

The Petitioner also asserted that he "plans to focus his work in Florida, where there is a scarcity in software developers" and that he would "offer[] a service to businesses in Florida that would ordinarily not have the opportunity for such an innovative resource." However, the Petitioner did not elaborate on the extent of demand for optometric software in Florida or elsewhere; the correlation, if any, between a computer software developer's work location and clients' locations in the present day; or other issues related to the stated "scarcity in software developers" in Florida.

The Petitioner also did not clarify how his software development endeavor would cause "direct and indirect employment and growth," as he asserted, and which company's workforce would experience such employment and growth trends. For example, in response to the Director's prior request for evidence, the Petitioner submitted a copy of a business plan that reiterates information already in the record; however, the business plan does not indicate that the proposed endeavor would entail the Petitioner employing anyone other than himself.

The Director acknowledged that "the proposed endeavor has substantial merit." However, the Director observed that the record does not "explain how the work of any one particular [s]ystems [a]nalyst or [s]oftware developer will offer benefits that rise to the level of national importance." The Director noted that the record does not establish how the proposed endeavor would "sufficiently extend beyond an organization and its clients to impact the industry or field more broadly." The Director also noted that the record does not contain "sufficient information and evidence to illustrate the number of individuals [the] proposed endeavor plans to hire[, . . .] the rate of pay he intends to pay his current or prospective employees," or other factors that may indicate "substantial positive economic effects," referencing the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. The Director further concluded that the record does not satisfy the second or third *Dhanasar* prongs. *See id.* at 888-91.

On appeal, the Petitioner generally reasserts that the proposed endeavor to develop "remote visual acuity test" software "will contribute to the development of telehealth market in the United States [and] have implications beyond his clients." However, the Petitioner also clarifies that the proposed endeavor would primarily benefit the "patients and medical providers" who may use the software he develops. More specifically, the Petitioner explains that the software would "cut[] down on travel costs for patients." The Petitioner also reiterates generalized information already in the record regarding software development, healthcare, and business. The Petitioner specifically states that the "proposed endeavor is to act as an independent contractor," and he does not assert on appeal that he intends to employ any workers other than himself.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *See id.* at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved

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

We first note that the Petitioner's references to generalized information regarding software development, healthcare, and business do not establish how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance, contemplated by *Dhanasar*. *See id.* The generalized information the Petitioner references, and the copies of publications in the record that provide such information, do not address the Petitioner, the specific endeavor he proposes to undertake, and how the specific endeavor he proposes to undertake may have broader implications including, but not limited to, "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances," or "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Because the generalized information regarding software development, healthcare, and business do not address how the specific endeavor the Petitioner proposes to undertake may have the type of broader implications contemplated by *Dhanasar*, it does not establish whether the proposed endeavor may have national importance, required by the first *Dhanasar* prong. *See id.*

Although the Petitioner reasserts on appeal that "his work will have implications beyond his clients," the record does not clarify how people who are not optometric patients of the particular clients who would use the Petitioner's software may somehow benefit from the software he would develop. On the contrary, the Petitioner also states on appeal that the primary benefactors of his software are the "patients and medical providers" who may use the software he develops. More specifically, the Petitioner elaborates that the way that patients would benefit from his software is that it would "cut[] down on travel costs for patients." The record does not clarify how any other parties—such as patients with similar medical conditions but whose optometrists do not use the Petitioner's software—would somehow benefit from the reduction in travel costs for the patients of the Petitioner's clients. Even to the extent that reduced travel costs for the particular patients of the Petitioner's clients may provide positive economic effects to those individuals, the record does not credibly establish how their reduced travel costs amount to the type of "substantial positive economic effects" indicative of national importance, contemplated by *Dhanasar*. *See id.* Similarly, the record does not clarify how software that facilitates the type of medical examinations that already exist demonstrates the type of national or even global implications within the field of optometry, or any other field, "such as those resulting from certain improved manufacturing processes or medical advances," contemplated by the first *Dhanasar* prong. *See id.*

We further note that the Director addressed inconsistent information in the record regarding whether the Petitioner would employ other workers and, if so, the number of workers he would employ, their wages, and other material issues; however, the Petitioner does not assert on appeal that he would employ other workers, thereby waiving that issue. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). On the contrary, as noted above, the Petitioner asserts on appeal that the "proposed endeavor is to act as an independent contractor." Relatedly, as noted above, the business plan the Petitioner submitted does not indicate that he plans to employ other workers. Because the Petitioner's business plan does not indicate that he plans to employ other workers, and because the Petitioner waived that issue on appeal, the record does not establish how the proposed endeavor may have

"significant potential to employ U.S. workers," contemplated by the first *Dhanasar* prong as an example of how a proposed endeavor may demonstrate substantial positive economic effects. *See id.*; *see also Matter of Dhanasar*, 26 I&N Dec. at 889-90.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. *See id.* We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.