U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31201035

Date: JUNE 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant in the field of information technology (IT), seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, 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 as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] The matter is now before us on appeal. 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.

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,[2] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

[2] *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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

The Petitioner proposed to work as an accountant "providing services in information technology applied to taxation and accounting, developing and implementing automation systems in accounting processes and financial services for small, medium, and large-sized companies in different sectors." The Petitioner stated that he "will positively impact U.S.-based companies by generating results in systemic automation in calculating taxes and accessory obligations and in quickness in the accounting and operational processes, reducing companies' exposure to tax authorities, fines, and inspections, directly impacting operating costs and decision-making processes." In response to the Director's request for evidence, the Petitioner submitted a job offer letter from a potential employer seeking to employ him as a "collaborator" in the consulting and accounting services sector.

The Director determined that the Petitioner demonstrated that his proposed endeavor was of substantial merit. However, the Director also concluded the Petitioner did not establish that his proposed endeavor had national importance. On appeal, the Petitioner contends the Director erred in their determination that he did not establish the national importance of his proposed endeavor and asserts he qualifies for a national interest waiver.

The first prong of the *Dhanasar* framework, 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. *Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An 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 889-890.

The Petitioner asserts on appeal that his proposed endeavor goes beyond serving an organization or its clients because "[h]is expertise in addressing complex tax systems, implementing automation, and migrating operations to cloud computing systems can significantly impact the entire finance and accounting industry." In addition, the Petitioner states that his "track record of solving challenges within a dynamic and complex tax system demonstrates that his skills and expertise are far superior to those of an average accountant." However, the Petitioner's expertise and skills are relevant to *Dhanasar's* second prong, which evaluates whether an individual is well positioned to advance a proposed endeavor; his prior experience does not establish that his proposed endeavor has national importance. *See Dhanasar* at 888-91.

The Petitioner further articulated plans to provide training to other professionals in the fields of accounting and information technology. The record does not show that this undertaking has broader implications in his field, beyond those who participate in his training sessions. While the Petitioner's plan to provide training to other professionals in the fields of accounting and information technology has merit, he does not sufficiently explain and document that his teaching or instructional activities would offer benefits extending beyond his trainees to impact the fields of accounting and information technology more broadly. Likewise, 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. *See id.* at 893.

The Petitioner also did not show that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner contends on appeal that his plan "to streamline tax processes, enhance accounting operations, and promote cloud computing adoption can lead to cost reduction, operational efficiency, and increased profitability for businesses," and therefore, promote economic growth. In addition, the Petitioner references his response to the Director's request for evidence (RFE) where he claimed he will generate positive economic effects because his "proposed endeavor will benefit taxpayers and the IRS by providing innovative and efficient accounting information solutions to improve tax administration and customer services." But the Petitioner has not suggested or shown that his solutions or methodologies differ from or improve upon those already available and in use in the United States, as contemplated by Dhanasar. *Id.* (observing that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances"). The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Any basic economic activity has the potential to positively impact the economy; however, the economic and social benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not submit sufficient supporting evidence to establish that his proposed financial services in the IT industry would have the claimed impact on taxpayers and the IRS. Without objective evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show sufficient benefits to the U.S. regional or national economy resulting from his accountant position that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Dhanasar* at 890.

Finally, the Petitioner also highlights from the RFE response that his proposed endeavor aligns with national initiatives, including the National Taxpayer Advocate. However, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *Id.* at 889. Instead, when determining whether the proposed endeavor has national importance, the relevant question is not the importance of the field, 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.* Thus, while we acknowledge that the financial services technology industry is important, this fact is insufficient to establish the national importance of his proposed endeavor.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.[3] The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

ORDER: The appeal is dismissed.