U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31632576

Date: JUN. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an Information Technology (IT) Manager and Engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 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. 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 an advanced degree professional 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.

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

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting

at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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:

- 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

After reviewing the entirety of the record, we agree with the Director's conclusion that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that the waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. On appeal, the Petitioner contends that the Director misapplied the preponderance of the evidence standard and did not review the entirety of the evidence submitted.

As the Petitioner correctly asserts on appeal, the standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we agree with the Director's evaluation of the evidence, and conclude it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

The first *Dhanasar* 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

[1] *See also 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 to be discretionary in nature).

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

The record includes, but is not limited to, a detailed resume, business plan, documentation of the Petitioner's work in the field, recommendation letters, and articles and reports from the field of information technology. The Petitioner intends to provide information technology consulting services through his company, [redacted] resulting in improved product management and online training. He asserts these improvements would lead to revenue increase for a significant number of American businesses and utilizes the slogan "product management for everyone". Although the Director found the proposed endeavor did not possess substantial merit, the Petitioner provided industry reports and articles on the importance of technology in business and manufacturing, reflecting that the endeavor falls within one or more of the areas contemplated by *Dhanasar*.

Next, we look to national importance and we focus on "the specific endeavor that the foreign national proposes to undertake," not the importance of the industry or profession in which the individual will work. *See Dhanasar*, 26 I&N Dec. at 889.

The Petitioner contends that the articles and industry reports discussing the prominence of various initiatives, such as "*10 Most In-Demand Technology Jobs for 2022 and How to Hire for Them*" "*Top Technology Trends*" and "*Deloitte 2022 Technology Outlook*" support his assertion that his IT services demonstrate the national importance of his proposed endeavor. However, the matter here is not whether these initiatives, as well as the topics of information technology, or similarly related subjects, are nationally important. Rather, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his services as an IT Manager and Engineer through his company in the [redacted] metropolitan area of Florida. Moreover, the Petitioner's reliance on reports regarding entrepreneurship in the immigrant community such as "*The Economic and Fiscal Consequences of Immigration*" and the American Immigration Council's, "*How Immigrant Entrepreneurs Move the U.S. Economy Forward*" address the benefits that the foreign-born bring to the United States, but not the Petitioner's specific endeavor or how [redacted] is nationally important.

In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n 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 890. Although the Petitioner's statements reflect his intention to provide valuable services resulting in "improved product management and, by extension, revenue increase for a significant number of American businesses," he has not provided sufficient information and evidence to demonstrate that the prospective impact rises to the level of national importance. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

The Petitioner also maintains that "there has been a decline in the production of U.S. graduates and professionals capable of developing, applying, and maintaining today's advanced technologies – not

to mention yesterday's technological systems." However, the alleged shortage of occupations or occupational skills does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Moreover, the Petitioner stresses his "extensive professional experience in the field of Information Security and Forensic Analysis" and his "over 18 years of experience and services in the IT field." However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong not whether the Petitioner has the experience and capabilities to provide those services.

Similarly, the Petitioner asserts that the submission of the letters of recommendation address the impact of his work in the field. The letter from [redacted] discusses "his proven track record" and "coupled with his Information Technology expertise, equips him with the capabilities to replicate his successful formula in any market." Although the letter refers to the Petitioner's particular services with this colleague, the letter does not show the broader impact of the Petitioner's work and is limited to his specific collaborators. In the same way, the fact that the Petitioner is a member of several professional associations such as DIALECTICA and SCRUM ALLIANCE and a Certified Scrum Product Owner since 2022 and has been asked to speak at professional conferences, does not indicate the national impact of his proposed endeavor. The letters of recommendation, professional associations and speaking engagements pertain to the Petitioner's prior work and accomplishments and relates more to the second prong rather than the first prong of national importance of the *Dhanasar* framework. *Id.* at 890.

In the business plan, the Petitioner contends the endeavor is nationally important because it falls withing 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.[3] On the other hand, while proposed IT and product management activities in STEM, for example, may have substantial merit in relation to U.S.business interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM more broadly, and therefore generally would not establish their national importance.[4] Here, the Petitioner has not shown that his endeavor aims to advance STEM technologies and research or has broad implications rather than providing his professional services in IT management.

Another factor in evaluating whether the Petitioner's proposed endeavor satisfies the national importance requirement is the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner did not demonstrate how [redacted] would largely influence the field and rise to the level

[2] *See generally* 5 USCIS Policy Manual D.2, https://www.uscis.gov/policymanual.
[3] *Id.*
[4] *Id.*

of national importance. 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. The record does not show through supporting documentation how his endeavor sufficiently extends beyond his prospective clients or employees, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, while he provided a business plan for the proposed company, the Petitioner did not present supporting evidence to corroborate the assertions and figures. Moreover, the Petitioner did not demonstrate how his business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan forecasts sales from $1.1M in year 1 to $10.3M in year 5, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the business plan claims the creation of 9 positions in year 1 and 84 positions in year 5, as well as 34 indirect jobs, the Petitioner did not demonstrate the relevance of these numbers and show that such future staffing levels would provide substantial economic benefits to the [redacted] Florida region or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[5]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[5] *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 applicants do not otherwise meet their burden of proof).