U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37287983

Date: MARCH 7, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) specialist, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 the record 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 the underlying 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 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. *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

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director determined the Petitioner qualified for EB-2 classification as an advanced degree professional because he submitted evidence of his bachelor's degree in computer science and more than five years of progressive experience in his field. We agree. The only issue on appeal is whether the Petitioner qualifies for a waiver of the job offer requirement in the national interest.

In his business plan, the Petitioner stated he would establish an information technology (IT) consultancy company and serve as its chief executive officer. The business plan explains the company will provide information technology services to business entities looking to venture into e-commerce retail or digitally transform their enterprises and operations by offering services including e-commerce website and application development, third-party integration, site optimization, security enhancement, and advice on the implementation of innovative digital solutions.

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* 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's proposed endeavor has substantial merit. We agree.

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 employ a significant population of workers, have other substantial economic benefits, or extend beyond his company's clients to have broader implications in his field.

On appeal, the Petitioner asserts the Director did not consider the specific issues and innovative solutions proposed by the Petitioner. The Petitioner claims his proposed endeavor has national importance because it will establish a secure environment for e-commerce platforms, provide innovative solutions for enhancing e-commerce development in the United States, and address the growing shortage of skilled IT professionals in the United States. The Petitioner cites his business plan as evidence of the national importance of his proposed endeavor. The Petitioner's business plan does not support these claims.

The business plan does not establish that the Petitioner's company's work on e-commerce platforms and development has national importance. The business plan states the Petitioner's company "will develop a sophisticated, multi-layered protection system that integrates several advanced security technologies, such as: Advanced Encryption Methods … Real-Time Data Monitoring … Machine

Learning-Based Fraud Detection ... Multi-Factor Authentication (MFA) ... Blockchain for Data Integrity ... Comprehensive Compliance Framework ... Customizable Security Protocols ... [and] User Behavior Analytics ...." The Petitioner also states his company would support e-commerce through predictive analytics, machine learning, big data analytics, natural language processing, and advanced web development technologies. The record does not establish that any of these technologies are unique or innovative or otherwise have national or even global implications in the Petitioner's field. *See id.* (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field). The Petitioner also has not demonstrated that his work with these technologies would extend beyond his company's clients to impact his field more broadly. *See id.* (explaining "we look for broader implications").

In regard to addressing a shortage of IT professionals, the business plan projects the company will employ 6 individuals the first year, increasing to 25 in the fifth year. The record does not demonstrate that the company will operate in an economically depressed area and does not establish that the employment of up to 25 people is significantly high in the IT field. Although the Petitioner states his company will also provide guidance, mentorship, professional training, and ongoing support to software engineers, he did not submit evidence of any corresponding employment such efforts would secure. Although the business plan projects a net profit of $32,952 the first year, increasing to $114,370 in the fifth year, the record does not demonstrate that such profit is significantly high in the IT industry or otherwise constitutes a substantial positive economic effect indicative of national importance.

The Petitioner asserts his proposed endeavor "aligns with the national interest by addressing core issues in the U.S. economy, including e-commerce security, digital transformation, and the development of a skilled IT workforce." The Petitioner also submitted articles on software development challenges, how the IT sector powers the U.S. economy, software engineering, e-commerce, data protection, and data privacy. None of the articles discuss the Petitioner's proposed endeavor. Moreover, our assessment of national importance does not focus on the importance of a field or occupation in general, but instead "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* The Petitioner has not shown that his company's work will extend beyond its clients and mentees to impact his field more broadly on a level commensurate with national importance.

The Petitioner submitted support letters from past employers who praise his skills and past accomplishments, but do not discuss his proposed endeavor. D-F-[2] states the Petitioner's business plan indicates his company "will provide complex technological solutions, taking into account the specifics and niche of each individual client," but does not discuss any impact the Petitioner's company would have in his field beyond his service to individual clients.

In sum, the Petitioner has not established that his 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 his field, or has other broader implications indicating national importance. Consequently, the Petitioner does not meet the first *Dhanasar* prong.

[2] We use initials to protect the privacy of the referenced individual.

B. 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.