U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30107540

Date: MAR. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computer systems engineer/architect, 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 that the Petitioner did not establish that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 884. Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *See 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"); *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).

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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner 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.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that he is a systems architect with more than 20 years of experience in system development and specialized experience in developing system integrations on the Mulesoft platform. His proposed endeavor is to "work in the American market as a system architect, offering consulting services, helping large American companies in the system integration sector, based on [his] specialized knowledge of Mulesoft." He proposes to offer the following services to U.S. companies:

- Analysis of the stability, interoperability, portability, security or scalability of the system architecture.
- Systems engineering, software engineering, systems integration, or distributed systems architectures.
- Selecting appropriate design solutions or ensure compatibility of required system components, system data, hardware or software components.

Through his consulting services, the Petitioner states that his proposed endeavor will:

- Promote the use of good IT governance practices.
- Protect the security of sensitive data and deliver quality services.
- Promote expansion of sectors that need digital transformation.
- Integrate business-critical systems.

He further states that, in his proposed endeavor, he will conduct research on recognized solutions and train and qualify new professionals.

With the initial filing the Petitioner submitted evidence of his education and experience, a professional plan describing his proposed endeavor and claimed eligibility for a national interest waiver, as well as recommendation and support letters, an expert opinion, and certificates of achievement. He also

[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).

[2] The record demonstrates that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree awarded in 2006, followed by more than five years of progressive experience. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

submitted industry reports and articles discussing cybersecurity and its importance as an initiative of the U.S. government.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner's response to the RFE includes an updated professional plan dated March 2023, additional industry reports and articles, a letter of intent for a partnership with the Petitioner, and copies of evidence already in the record.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance. The Director stated that the record did not demonstrate that the Petitioner's proposed endeavor will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in his field of endeavor, going beyond his clients. The Director concluded that further consideration of the Petitioner's eligibility under the second and third *Dhanasar* prongs (whether the Petitioner is well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification) would serve no meaningful purpose.

On appeal, the Petitioner submits a brief and asserts that the Director's decision "imposed novel substantive and evidentiary requirements." In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

A. Substantial Merit and National Importance

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

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." *See Id.* In *Dhanasar*, we further 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.

The Petitioner submits his professional plan in an attempt to support the national importance of his proposed endeavor. The Petitioner describes the use of Salesforce technology with Mulesoft in business and the demand for information technology (IT) professionals trained in these technologies. He then describes his experience and professional accomplishments in training IT professionals

through his consulting company based in Brazil, [redacted], and its training services, [redacted] He asserts that he will expand [redacted] to the United States to offer consulting services to U.S. businesses and to train individuals through the [redacted][3] The Petitioner states that he has partnered "with [redacted] University, licensed by the Florida government, which currently has over 5,000 students regularly enrolled in undergraduate and graduate programs."

"In determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (emphasis added). The Petitioner asserts that his proposed endeavor will have a broad economic impact by increasing revenue and creating jobs within American companies. However, the Petitioner has not supported these assertions with sufficient independent, objective evidence. The Petitioner does not provide evidence of his claimed partnership with [redacted] University. Although the Petitioner proposes to expand his current consulting business, the record does not include a business plan describing how he seeks to implement his proposed endeavor. The Petitioner's professional plan does not provide sufficient detail beyond generalized projections of "boosting software sales," "increas[ing] employee efficiency," and "job creation." The Petitioner's statements are not specific or detailed enough for us to assess the potential prospective impact of it in the abstract, without considering the specific ways in which the Petitioner intends to implement this goal. The Petitioner does not explain how his consulting services will have broader implications beyond his clients, such as substantial positive economic effects, broad enhancements to societal welfare, or contributions to the advancement of a valuable technology.

The Petitioner submits articles and industry reports describing competitiveness in IT and the importance of cybersecurity, as well as an Executive Order demonstrating that science, technology, engineering and mathematics (STEM) is a national initiative.[4] The record includes a posting from an unidentified website by an unidentified author, dated October 2021, and titled "Project Failure Statistics: the Shocking Truth." The posting analyzes statistics based on 2015 data to identify mistakes of and solutions for project management. However, the posting does not identify the types of projects analyzed, does not mention the field of IT, and does not specifically discuss the Petitioner's proposed endeavor. Similarly, a May 2023 article from the Harvard Business Review titled "The Digital World is Changing Rapidly. Your Cybersecurity Needs to Keep Up," demonstrates that cybersecurity is important for U.S. businesses but does not address the national importance of the Petitioner's specific proposed endeavor. The article provides general information and does not focus on the Petitioner's specific proposed endeavor. As noted above, the Acting Director determined the endeavor has substantial merit, and we agree. However, the question we are examining here is national importance.

When determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. Much of the

[3] In her decision, the Director states that the Petitioner's March 2023 professional plan submitted in response to the RFE mentions for the first time his intention to train IT professionals. The Director determined that this was a material change to the Petitioner's initial proposed endeavor and declined to consider this aspect in evaluating the evidence. However, upon review of the record, we conclude that the Petitioner's initial professional plan, dated May 2022, discusses his intention to train IT professionals as part of his proposed endeavor. Therefore, this portion of the Director's decision is withdrawn and we will consider both the initial and updated professional plans in analyzing the Petitioner's eligibility.

[4] While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

Petitioner's evidence relates to the IT industry generally, rather than his specific proposed endeavor. Although we agree that STEM is important and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the Petitioner's specific proposed endeavor. Even considering the articles and reports, collectively and in the totality of circumstances, the record contains insufficient information or evidence regarding the Petitioner's proposed endeavor to show broad potential implications demonstrating national importance.

The Petitioner also references an expert opinion prepared by Dr. [redacted] of [redacted] University. We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis Dr. [redacted] generally describes the role of a systems architect and states that the Petitioner's proposed endeavor supports goals of "business competitiveness and innovation." Although Dr. [redacted] states that the Petitioner plans to "act as a system architect for American businesses," he does not discuss the details of the Petitioner's proposed endeavor with specificity. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*

Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the Petitioner's specific proposed endeavor and why it would have national importance. Dr. [redacted] does not elaborate on how the Petitioner's specific proposed endeavor will have a prospective impact on the United States, including the national or global implications on the IT field, the potential to employ U.S. workers, or the positive economic effects. His opinion is general in nature, concluding that IT is of national importance "related to the economy and global leadership." Dr. [redacted] does not provide a substantive analysis of the Petitioner's specific proposed endeavor or suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States.

On appeal, the Petitioner relies upon the evidence he previously submitted and asserts that the Director imposed a novel standard of evidence. However, the Petitioner does not identify the novel standard or demonstrate an erroneous application of law or policy. The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the trends in IT. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.[5] *See INS v. Bagamasbad*, 429 U.S. at 25.

[5] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

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concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance. In the RFE, the Director noted that the Petitioner's initial evidence also did not demonstrate that he is well-positioned to advance his proposed endeavor, or 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. Although the Petitioner submitted a letter of intent in response to the RFE in support of the second *Dhanasar* prong, it did not submit additional evidence in support of the third *Dhanasar* prong. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response. The Director fully addressed the initial supporting evidence in the RFE and explained how it was deficient in establishing that the Petitioner met the *Dhanasar* factors and would be eligible for a national interest waiver. Neither the letter of intent, nor the Petitioner's assertions on appeal, establish that he meets all of the three *Dhanasar* prongs.