U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37188812

Date: MAR. 12, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a computer network architect and entrepreneur, 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 found that the Petitioner was an advanced degree professional and that his endeavor was of substantial merit, but denied the petition, concluding that the Petitioner did not establish that his endeavor is of national importance, that he is well-positioned to advance his endeavor, or that, on balance waiving the job offer requirement would benefit the United States.[1] 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.

[1] We note that the evidence in the record is ambiguous as to whether the [redacted] awarded the Petitioner a "título de bacharel" after four years of study. Typically, U.S. bachelor's degrees require four years of study to complete. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977). 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 foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*. While the academic evaluation states that the Petitioner holds the equivalent of a bachelor's of science from an accredited institution of higher education in the United States, the Petitioner's academic transcript seems to indicate three years of study. The evaluation does not discuss how many years of study the Petitioner completed. Because the national importance issue is dispositive, we reserve our decision on this issue, but the Petitioner should address this in any further filings where an advanced degree is a requirement.

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,[2] 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

The Petitioner intends to operate a Florida-based company as a computer network architect and entrepreneur. He states that he wants "to empower businesses with state-of-the-art AI and IT solutions, transforming industries and driving sustainable growth."

The issue to be determined on appeal is whether the Petitioner has demonstrated his proposed endeavor's national importance. As the Petitioner has not established the specific proposed endeavor's national importance as set forth below, we will reserve our opinion on whether the Petitioner has met *Dhanasar's* second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

A. National Importance

The Director determined that the evidence did not establish that the Petitioner's proposed endeavor is of national importance. On appeal, the Petitioner contends that his proposed endeavor is "clearly of…national importance when considering how much a professional of his caliber can contribute." Upon de novo review, we agree with the Director's determination that the Petitioner did not establish the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* 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

[2] *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).

global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90.

In the initial submission, the Petitioner stated that he has over sixteen years of extensive professional experience in the field of information technology (IT), strategic planning, and project management. He further stated that he has a "profound knowledge and hands-on experience in IT and AI (artificial intelligence) implementation which he will use as a Computer Network Architect and Entrepreneur" in the United States. The Petitioner intends to do this by "expanding and progressing" his own consulting company in Florida.

Upon initial review, the Director determined that the Petitioner had not submitted sufficient evidence to show that his proposed endeavor was of national importance. In a request for evidence (RFE), the Director stated that the Petitioner's reliance on his academic credentials and professional experience to establish his endeavor's national importance was misplaced as such qualifications go to *Dhanasar's* second prong. Further, the Director noted that the record did not show how the Petitioner's techniques, or methodologies are sufficiently innovative or distinct from those in other similar businesses, to represent an improvement in the field with the potential to have an impact broad enough to demonstrate national importance.

The Director stated that the scope of the Petitioner's work appeared limited to specific sectors and organizations rather than extending to broader national interests. In addition, the Director stated that the Petitioner's "work in developing AI and blockchain solutions, while commendable, does not demonstrate a direct and substantial impact on national security, [the] economy, or technology sectors as required under the *Dhanasar* criteria." Lastly, the Director noted in the RFE that the Petitioner's endeavor did not show impacts that would be national in scope, affect broader industry practices, lead to substantial job creation, or significantly advance technological development on a national scale. The Director requested that the Petitioner submit evidence to establish his endeavor's national importance, that he was well-positioned to advance his endeavor, and 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.

On review of the Petitioner's RFE response, the Director's decision found that the Petitioner had not established his endeavor's national importance.[3] Specifically, the Director found that the Petitioner did not establish his endeavor's potential prospective impact because the Petitioner's evidence "primarily highlights his individual achievements and roles within various companies" without establishing substantial national impact. The Director found that the evidence failed to demonstrate how the Petitioner's experience in software development and IT consultancy has "directly influenced national policies, economic growth, or technological advancements on a large scale." The Director also found that the Petitioner had not demonstrated that his endeavor will broadly impact the field beyond his company's clients and suppliers to reach national importance. Further, the Director found that the Petitioner's background and qualifications are considerations under *Dhanasar's* second prong which "shifts the focus from the proposed endeavor to the foreign national."

[3] The Director also requested evidence to establish that the Petitioner had an advanced degree. As noted above, the Director found that the Petitioner established that he had the equivalent of an advanced degree, and that his proposed endeavor had substantial merit. Further, the Director found that the Petitioner did not meet either the second or third prongs.

On appeal, the Petitioner contends that his proposed endeavor "is poised to have a substantial prospective impact on both the national and global stages." He argues that his company "aims to deliver transformative solutions that revolutionize industries" by "leveraging cutting-edge technologies such as artificial intelligence, blockchain, and machine learning." Further, the Petitioner states that his endeavor "can create significant economic impacts within the United States" and that his company's "economic footprint will be substantial, with financial projections indicating new revenue of $26.1 million and an investment amounting to $1.3 million." The Petitioner contends that his company "will have national and even global implications within the fields of AI and IT." Lastly, the Petitioner argues that his company plans to "create 49 new jobs, significantly boosting employment opportunities for U.S. workers" and will establish "most of its locations in qualified HUBZones."

In his brief on appeal, the Petitioner urges that "[d]ue to the record of his business achievements and expertise throughout over twenty-eight (28) years of work experience, the [Petitioner] will successfully manage his business." Further, the Petitioner asserts that "[f]oreign-born entrepreneurs have historically been a key driver of American innovation." Accordingly, the Petitioner contends that "business-capable immigrants, such as [t]he [Petitioner], are actively filling a gap in national economic production." Finally, the Petitioner argues that his "expertise and skill set will support U.S. businesses in developing a competitive edge in both national and international markets."

Significantly, the Petitioner makes the above contentions in the national importance section of his brief. The Petitioner's background qualifications go to *Dhanasar's* second prong which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. However, when considering the national importance of a proposed endeavor we do not look to a petitioner's qualifications and expertise but rather to whether the specific endeavor would have substantial positive economic effects, has a significant potential to employ U.S. workers, would broadly enhance societal welfare, or would broadly enhance cultural and artistic enrichment. Thus, the Petitioner's background and experience, however commendable, do not provide evidence of the national importance of his proposed endeavor.

Next, the Petitioner argues that his company will create 49 new jobs and that the "strategy is particularly aimed at economically depressed areas." The Petitioner states that "[b]y establishing most of its locations in qualified HUBZones," his company will "recruit local workers, contributing to the economic development of these regions."[4] According to the Petitioner's business plan, his company will "establish its headquarters in a qualified HUB Zone in [redacted] Florida." However, the Petitioner does not state, and the evidence in the record does not indicate, that his company will be a participant in the HUBZone program.[5] Thus, we are unable to conclude that his endeavor will have substantial positive effects, particularly in an economically depressed area, to reach the level of national importance.

[4] According to the Small Business Administration's website, "[t]he HUBZone program fuels small business growth in historically underutilized business zones with a goal of awarding at least 3% of federal contract dollars to HUBZone-certified companies each year."

[5] We note that a search of the Petitioner's company on Florida's Division of Corporations' website indicates that his company's principal address is not located in a current HUBZone. We further note that while the Petitioner's business plan states that he "will be the sole owner" of his company, Florida records show that another person appears as a co-manager of the LLC.

The Petitioner contends that his endeavor's "financial projections indicat[e] new revenue of $26.1 million and an investment amounting to $1.3 million." Further, the Petitioner expects his endeavor to "contribute $2.7 million in income taxes and $8.1 million in salaries over five years." The business plan states that the Petitioner will invest $1.3 million into his company, $300,000 of which will originate in retained earnings. However, the Petitioner's financial projections are merely projections and unsupported by any independent, corroborating evidence, such as contracts or letters of intent. The business plan does not sufficiently detail the basis for the revenue projections or explain how the revenue projections will be realized. Without a basis for the projections, the Petitioner has not demonstrated how it is more likely than not that his company will have a substantial positive economic impact.

The Petitioner contends that the industry reports and articles he submitted "explain the significance, and scope" of his proposed endeavor. He states that these reports and articles "discuss how immigrant entrepreneurs, such as [the Petitioner], play a vital role in the recovery of the U.S. economy" and "directly contribute to the country's ongoing economic growth." He further argues that "[f]oreign-born entrepreneurs have historically been a key driver of American innovation" and that "[i]nternational talent has fueled the United States' rise as the global hub for innovation and opportunity." Additionally, the Petitioner states that research from the National Foundation for American Policy "found that 55% of the country's $1 billion startup companies has at least one immigrant founder." The reports provide only general information. The key factor is the Petitioner's specific endeavor. The Petitioner has not shown how his proposed endeavor is of national importance. For instance, the IBISWorld report expects that IT consulting industry revenue will "rise at an annualized rate of 3.4% to $736.0 billion over the five years to 2027." Yet, the report does not mention the Petitioner or his proposed endeavor. The report does not demonstrate how the Petitioner's endeavor will be part of that expected growth.[6] Thus, we conclude that the evidence does not show that the Petitioner's endeavor is of national importance, as the Petitioner has not demonstrated economic or other impact that will reach the level of national importance.

B. Standard of Proof

On appeal, the Petitioner also argues that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations" in his decision and that "the Service did not apply the proper standard of proof in this case, instead imposing a stricter standard." The Petitioner relies on *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r 1989), among other caselaw and policy, for the proposition that the preponderance of the evidence standard applies to this case and that the "preponderance of the evidence is rock bottom at the fact-finding level of civil litigation." Further, the Petitioner asserts that "[o]nce the 50% threshold is crossed, the case should be approved."

We agree that the standard of review in this case is the preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This standard requires that the evidence demonstrate that the Petitioner's claim is "probably true, where the determination of truth is made based on the factual circumstances of each individual case." *Id.* at 376, citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989) (internal quotes removed).

[6] While we discuss a sampling of the evidence in the record, we have reviewed and considered the totality of evidence.

However, the Petitioner has not explained how the Director erred in applying the preponderance of the evidence standard in adjudicating his case. The Director correctly states the standard of proof and cites to *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r 1989). The Petitioner makes conclusionary statements such as "it remains established that the [Petitioner] has provided relevant, probative, and credible evidence, demonstrating in a 'more likely than not degree'" that his petition is approvable. Further, the Petitioner contends that "[h]is academic background, outstanding professional record, and significant contributions to the field are substantively corroborated by concrete evidence." Because the Petitioner does not provide an analysis of exactly how the Director erred in applying the standard of review, we are unable to discern any error.

III. CONCLUSION

As the Petitioner has not met the first prong of 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. As our determination on the national importance issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion on whether the Petitioner has met *Dhanasar's* second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.