U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30586360

Date: MAR. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner proposes to establish an information technology (IT) consulting business in the United States. He seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category - and, thus, related requirements for certifications from the U.S. Department of Labor (DOL) - if petitioners demonstrate that waivers of these U.S.-worker protections are "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner demonstrated his eligibility for the EB-2 category as a member of the professions holding an "advanced degree." *See* section 203(b)(2)(A) of the Act. But the Director found that the Petitioner did not warrant a national interest waiver. On appeal, the Petitioner contends that, in finding insufficient evidence of the proposed endeavor's "national importance," the Director did not objectively evaluate the entire record.

The Petitioner bears the burden of demonstrating eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the Petitioner has not established the claimed national importance of his proposed undertaking. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as advanced degree professionals or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ the individuals in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian native and citizen, earned a bachelor's degree in information systems in his home country in 2011. Until 2017, he worked as a systems analyst in Brazil.

Now in the United States, the Petitioner seeks to establish an IT consultancy here specializing in helping small- and medium-sized businesses boost their productivity and profits. The Petitioner states that he would serve as the consultancy's chief executive officer and lead IT consultant. He states that the business would start with six employees, expanding by its fifth operating year to 25 workers. The Petitioner estimates that, over the same period, the business's revenues would increase from $630,000 to $2,901,400.

B. EB-2 Qualifications

The record supports the Director's finding that the Petitioner qualifies for EB-2 classification as an advanced degree professional. He submitted evidence that his Brazilian bachelor's degree equates to a U.S. baccalaureate in information systems. He also demonstrated that he gained at least five years of post-baccalaureate experience in the IT field. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include a "United States bachelor's degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty").

C. Substantial Merit

The record also supports the Director's finding that the Petitioner's proposed endeavor has substantial merit. A proposed undertaking may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner submitted evidence that his endeavor would generate revenues, create jobs, and help to ease a U.S. shortage of IT professionals. We therefore agree that the proposal has substantial merit.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An 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." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "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.*

The Director found insufficient evidence that the Petitioner's proposed business would have a national impact. The Director stated that the Petitioner had not demonstrated the proposed venture's effect beyond itself and its customers.

The record supports the Director's findings. The Petitioner has not explained how his business's estimated generation of about $2.9 million in revenues and its employment of 25 people would substantially boost the national economy. He also has not shown that the consultancy would operate in an economically depressed area. Further, the Petitioner has not demonstrated that his business would significantly advance or otherwise affect the national IT field.

On appeal, the Petitioner maintains that his proposed endeavor has significant potential to employ U.S. workers and generate other substantial positive economic benefits. He states that he can develop "strong relationships" with owners of small- and medium-sized businesses who need to outsource their IT functions and that he will help the United States "improve" its IT workforce, in part, by reaching a broad audience through seminars, lectures, courses, and classes.

The Petitioner also contends that his proposed endeavor would enhance U.S. social welfare. He states that his venture would help businesses of all sizes and industries improve their efficiency and enhance their profits. By helping businesses boost their productivity and profits, the Petitioner states that his enterprise would spur job creation and increase tax revenues.

But the record does not sufficiently support the Petitioner's assertions. He states that his business would geographically expand to other U.S. states within five years. But his employment and revenue projections do not indicate that his venture would have the size or scope to substantially affect the national economy.

The Petitioner also contends that the U.S. government considers IT ventures like his to be nationally important. He cites the 2021 Bipartisan Infrastructure Law, which authorizes increased investments in national infrastructure, including broad-band installations for reliable high-speed Internet service across the country. The Petitioner states that he can guide infrastructure workers in the IT sector.

The Petitioner, however, has not demonstrated that the infrastructure law would affect his proposed consultancy. The record does not indicate that the business would install or provide Internet service. Also, even if the law affected the proposed endeavor, the Petitioner has not established that the business would have the size or scope to substantially improve U.S. Internet service.

The Petitioner's case resembles one of the proposed endeavors in *Dhanasar*. There, we found that a plan to teach university courses in science, technology, engineering, and mathematics (STEM) disciplines had substantial merit. *Matter of Dhanasar*, 26 I&N Dec. at 893. But we held that the proposed venture lacked national importance because the record did not demonstrate that the teaching "would impact the field of STEM education more broadly." *Id.*

As in *Dhanasar*, the Petitioner's proposed endeavor to provide IT consulting services has substantial merit. But, also as in *Dhanasar*, the record does not establish that the business would affect the IT field or the national economy "more broadly."

For the foregoing reasons, the Petitioner has not demonstrated that his proposed endeavor has national importance. We will therefore affirm the petition's denial.

E. The Remaining Waiver Requirements

Our decision regarding the proposed endeavor's national importance resolves this appeal. Thus, like the Director, we need not reach, and therefore reserve, consideration of whether the Petitioner is "well positioned" to advance his venture or whether a waiver would benefit the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *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 did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not demonstrated that his proposed endeavor has national importance. The Director therefore properly denied the national interest waiver request and, for lack of a job offer, the petition.

ORDER: The appeal is dismissed.