U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36774586

Date: MAR. 20, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 he is eligible for EB-2 classification or that the proposed endeavor is eligible for a discretionary national interest waiver. 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;

[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).

- 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 Director denied the petition, concluding that the Petitioner is not eligible for EB-2 classification as an individual of exceptional ability, and that he did not establish that a waiver of the job offer, and labor certification requirement, is in the national interest. On appeal, the Petitioner contests the Director's determination and asserts eligibility for the EB-2 classification[2] and under all three of the *Dhanasar* prongs.

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. *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.* The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.*

The Petitioner states that the proposed endeavor is to establish a consultancy, [redacted], in which he will deliver cloud-computing services to middle and large size enterprises. The services offered will include the following: cloud migration and strategic development; cloud infrastructure optimization; data security and compliance; and training and skill development through workshops, seminars, and training sessions. In the Petitioner's professional plan, he explains that through his endeavor, he aims to be a "central figure in propelling U.S. technological advancements," and that he will accomplish this by "designing and implementing scalable cloud solutions, predominately on [redacted] using the infrastructure as code tool [redacted]." The Petitioner also highlights his prior work experience in development operations to describe how he will "leverage cutting-edge tools like [redacted] for container orchestration" and foster a "culture within organizations [that] showcase . . . a profound understanding of integrating technological advancements with industry-specific regulations and operational efficiencies."

The Director determined in their request for evidence that the proposed endeavor is of substantial merit. We agree. However, in concluding that the Petitioner did not establish the proposed endeavor is of national importance, the Director determined that the endeavor's impact did not have

[2] As noted herein, we reserve review of the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability.

"implications beyond his current employer (or any prospective employers), their business partners, alliances, and/or unidentified clients at a level sufficient to demonstrate the national importance of his endeavor," or that the endeavor will have broader prospective impacts on U.S. interests or the cloud computing industry more broadly at a level commensurate with national importance. The Director considered the Petitioner's assertions, letters of support, and industry articles and reports; however, the Director determined that the information did not "establish how one consultant [could] produce benefits rising to the level of national importance, trigger substantial positive economic impacts, or establish that the proposed endeavor has significant potential to create jobs."

On appeal, the Petitioner reasserts that his proposed endeavor is of national importance because it will "contribute to the advance of a valuable technology." Moreover, the Petitioner contends that the Director misconstrued the standard required to establish national importance by emphasizing that the Petitioner's services are not "better, different or less costly than those already available in the United States," and overlooked the "broader national interests, such as economic growth, technological advancement, or societal development, beyond mere direct service comparisons." The Petitioner cites to his "expert letters and industry analyses" to emphasize the "innovative aspects" of his cloud technology consultancy. Moreover, the Petitioner asserts that the letters he provided from recognized professionals in the technology sector not only address his past experience and achievements, but also "the expected impact of his work" and "contextualize the potential for future impacts that align with national objectives in technological innovation and economic security." The Petitioner further asserts that the Director's application of *Dhanasar's* prong one is overly restrictive and misses the broader impacts including enhancements in the United States' "technological and economic infrastructure." Among the impacts the Petitioner asserts will flow from his endeavor are "significantly uplift[ing] the entire U.S. economy," "modernizing infrastructure and processes across multiple sectors," and "catalyzing broader economic and social advancements, including job creation, as industries adapt to new efficiencies and capabilities enabled by this technology." The Petitioner further explains that due to the nature of cloud-technology, the proposed endeavor has the potential to have sector-wide benefits. Finally, the Petitioner asserts his endeavor aligns with federal policies aimed at national growth and development and will help maintain the U.S.'s technical dominance and economic competitiveness.

Preponderance of the evidence means that the 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 their 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.* Upon de novo review of the record, we agree that the Petitioner has not established national importance as contemplated under the *Dhanasar* framework by a preponderance of the evidence.

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* As such, here, the issue is not whether cloud computing or infrastructure as code is nationally important. Rather, the Petitioner must demonstrate the national importance of his proposed endeavor, namely, his consultancy.

We acknowledge the Petitioner's evidence explaining the general value of cloud computing and infrastructure as code to his potential clients; however, this evidence does not sufficiently demonstrate how the cloud computing industry or his employment would have a broader impact on these fields at a national level commensurate with *Dhanasar*. For example, the Petitioner provided a report from the Market Analysis Report publication titled "Cloud Computing Market Size, Share & Trends Analysis Report by Service," which describes the largesse of the cloud computing industry as "483.98 billion in 2022;" however, as we explained above, it is not the importance of the industry alone but the proposed endeavor itself. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Thus, while the report is helpful to our understanding of the economic impact of the cloud computing industry, it does not mention the Petitioner or consider his specific proposed endeavor. *Id.* Further, as the Director noted, the Petitioner's claim that the proposed endeavor has national importance because it will maintain U.S. dominance in this industry is not persuasive because, other than the Petitioner's assertions, there is no indication that the proposed endeavor will impact or significantly enhance the U.S.'s cloud computing standing. *Id.* Further, as the Director noted, the shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. *Id.*

As noted above, we recognize the substantial merit of the proposed endeavor; however, contrary to the Petitioner's assertion, merely working in an important field does not necessarily establish the national importance of the proposed endeavor. In *Dhanasar*, we highlighted that while the field of STEM education may be of national importance, the duties of a STEM teacher in a classroom would not necessarily be of national importance because the impact that would flow from the teacher's activities would not sufficiently extend beyond the students sitting in their classroom. *Matter of Dhanasar*, 26 I&N Dec. at 893 (stating "[w]hile STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly.") Likewise, here, the record does not establish that the Petitioner's consultancy would impact the cloud computing industry more broadly, beyond the Petitioner's future customers. *Id.*

The Petitioner asserts that the submitted expert testimony and letters establish his proposed endeavor's national importance because they explain how his track record of work success demonstrates the potential contributions, he can make to the U.S. economy through technological innovation. The Petitioner also explains that his professional plan contains sufficient evidence to establish his endeavor's national importance. One letter written by an IT manager at [redacted] describes the Petitioner's work experience as a DevOps Engineer and concludes that he is "fully empowered to work in any company that seeks to optimize its operation using public cloud services and open-source technologies or any other technology related to companies." As it relates to prong one of the *Dhanasar* framework, this letter explains that the Petitioner's skills in cloud computing and implementation of [redacted] have positively impacted the companies where he worked. The other letters submitted contain similar testimonials. Thus, we acknowledge that the Petitioner has a positive reputation based on his skills and work experience, however, the letters do not sufficiently detail how the Petitioner's proposed endeavor would have a broader impact on the cloud computing or technology industries at a level commensurate with national importance. *Id.* Furthermore, we generally consider this type of evidence in the context of *Dhanasar's* second prong, when we evaluate whether a petitioner is well-positioned to advance their endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890. Moreover, the Petitioner's contention that his professional plan contains sufficient information to establish his endeavor's

national importance is unpersuasive because it lacks sufficient probative details to meet the standard of proof in this case. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

Without a more comprehensive understanding of how the Petitioner's technological consulting services would specifically contribute to the nation's economic vitality or technological growth, it is unclear how the proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 890. In addition, the Petitioner did not demonstrate how his consultancy would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner asserts that his endeavor will lead to economic prosperity and that by 2022, 65% of global GDP will be digitized. However, as the Director explained, the Petitioner's assertions are insufficient to establish his endeavor is of national importance. *Matter of Chawathe*, 25 I&N Dec. at 375-76. For instance, the Petitioner asserts that his endeavor will impact the growing cloud computing industry, however he does not sufficiently explain how the proposed endeavor would extend beyond his proposed clients. *Id.*

Because the Petitioner asserts his proposed endeavor in STEM will help the U.S. maintain its dominant position in technology development, we evaluated his endeavor under our STEM guidance, which recognizes the importance of progress in STEM fields and the essential role of individuals "with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security." 6 *USCIS Policy Manual* F.5(D)(2). However, as detailed above, the Petitioner's assertions are not supported by sufficient, probative evidence to establish the endeavor has broad potential implications to demonstrate national importance. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

Finally, the Petitioner asserts his endeavor will have a broader societal impact by assisting American workers in gaining the necessary skills to contribute to an economy that is changing through technological advances. Specifically, the Petitioner explains that his endeavor will include workshops, trainings and other education and skills "upliftment," which will be of national importance since 54% of all employees will require significant reskilling or upskilling. Thus, he asserts his endeavor will be vital to Americans ability to become adept with cloud and related technologies. In his professional plan, the Petitioner also explains that the societal progress stemming from his proposed endeavor will include participation in the fourth industrial revolution. Our guidance explains that if the proposed work would "broadly enhance societal welfare . . . or contribute to the advancement of a valuable technology" at nationally important levels, an endeavor may be considered of national importance. *See* 6 *USCIS Policy Manual* F.5(D)(1). However, the Petitioner's assertions are not supported by sufficient, probative evidence because they mainly focus on the importance of the industry involved and the Petitioner's work experience and credentials rather than the potential of the proposed endeavor to broadly enhance societal welfare or contribute to the advancement of a valuable technology at nationally important levels. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

B. EB-2 Classification and Second and Third Prongs of the *Dhanasar* framework

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, because the Petitioner has not established eligibility under prong one,

we decline to reach and hereby reserve the Petitioner's arguments regarding the second and third *Dhanasar* 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). In addition, we reserve review of the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability. *Id.*

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that a discretionary waiver of the job offer is in the national interest.

ORDER: The appeal is dismissed.