U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30291265

Date: MAR. 21, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software developer and technology trainer, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for the EB-2 classification as a member of the professions holding an advanced degree, but that he had not established 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 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they 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 (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:

[1] *See 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 is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. *Id.*

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner initially described his endeavor as follows;

> [The Petitioner's] proposed endeavor is to help expand the field of Software Technology by creating training and development centers for software technology that cater to young immigrants to address the lack of opportunity to train and receive certification before immigrating to the country. Specifically, [the Petitioner] plans to develop an online platform that will allow, with the endorsement of the participant or the participant's guardian, for the participant to register and locate or form groups with other young people according to their location and specific field of study. With this information, [the Petitioner] will then proceed to organize the groups and assign them a workspace and schedule with a facilitator.

The Petitioner's proposed activities include coordinating and making alliances with organizations and institutions for logistical and economic support, developing the online platform for registration of users, recruiting technicians and technology professionals, organizing and teaching groups of students, and training facilitators. The Petitioner proposed that this "Tech Community" will help young immigrants to be "interested in the area of technology" and secure internships and jobs in the field.

The initial evidence supporting the national importance of his endeavor consisted of surveys and reports on the STEM completion rates among college students and educational levels of Latino immigrants in the United States, the Biden administration's 2021 initiative on advancing educational equity for Hispanics, and the Bureau of Labor Statistics occupational handbook on software developers and analysts. In response to the Director's request for evidence (RFE), the Petitioner offered updated personal statements, various articles discussing the importance of equity in education and opening opportunities in the field of technology for the Hispanic and Latino population, and

[2] The Petitioner has shown that he has a U.S. equivalent of a master's degree in software engineering with his diploma, transcripts, and an academic credential evaluation.

additional government reports on advancing equity for Latino communities and eliminating barriers in STEM education for the underrepresented minorities.

Based on the evidence presented, the Director concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of *Dhanasar*.[3] On appeal, the Petitioner does not provide any new evidence but asserts that the Director's analysis of *Dhanasar*'s first prong overall "contains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." We find the Petitioner's claims unpersuasive and agree with the Director's ultimate conclusion, as discussed below.

The Petitioner first contends that the Director ignored "objective, documentary evidence," such as various articles and government reports submitted with the initial filing and the RFE response. With this evidence, the Petitioner has shown that the Hispanic and Latino population's access to education in STEM field is a nationally important issue and his endeavor has substantial merit. However, merely working in an important field is insufficient to establish the national importance of the proposed endeavor; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." *Id.* at 889. Here, the Petitioner's evidence regarding national importance consisted of generalized articles and government reports that do not specifically address his endeavor.

In claiming that the Director abused their discretion in failing to "correctly and rightfully consider the viable, probative evidence," the Petitioner cites to *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994).[4] However, the court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility nor does it suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence.[5] The Director's statement, "[the Petitioner] did not provide evidence that [his] work is nationally important," indicates that the quality of the evidence overall lacked probative value in supporting national importance of the endeavor, and therefore, we are not persuaded by the Petitioner's claim that the Director ignored the evidence on record. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The Petitioner also contends that the Director imposed "a novel or otherwise undefined and arbitrary requirement" by requiring "reports from government agencies, industry groups, or NGOS describing [the] proposed endeavor or letters from officials representing governmental agencies, industry groups or NGOS illustrating that [the] proposed endeavor has national importance." Per *Dhanasar*, this contention is unavailing. In *Dhanasar*, we gave significant weight to "probative expert letters from individuals holding senior positions in academia, government, and industry that describe the

[3] The Director also found that the Petitioner did not meet the second or third prong of the *Dhanasar*'s analytical framework.
[4] Here, the court stated that failure to consider all of the relevant evidence submitted by a plaintiff constitutes an abuse of discretion. *Buletini*, 850 F. Supp. at 1223.
[5] When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 341 (2d Cir. 2006) (citing *Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000)).

importance of hypersonic propulsion research as it relates to U.S. strategic interests" and "detailed expert letters describing U.S. Government interest" in Dr. Dhanasar's specific research. *Id.* at 892. Here, the Petitioner has not provided similar evidence, such as the type of expert opinion evidence or letters from government entities specifically detailing how his endeavor impacts a matter that is a subject of national initiatives. None of the articles and reports specifically address the Petitioner's endeavor or discuss the government's interest in promoting the use of the Petitioner's "Tech Community." Therefore, the Director properly noted the deficiency in the record documenting the interest of the federal government or other relevant national agencies in the Petitioner's specific proposal.

Given that the Petitioner largely relied on articles and government reports that do not discuss his specific endeavor to support his eligibility under the *Dhanasar*'s first prong, we will evaluate other evidence on record, including recommendation letters and letters of interest, to determine whether the endeavor has national importance due to its broad impact in the field. *Dhanasar* states: "[a]n 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.* at 890.

Here, the testimonial evidence in the record do not analyze the proposed endeavor or offer evidence of its impact. The reference letters, mostly from the Petitioner's former work colleagues, did not address the endeavor's specific impact or special methodologies attributable to the Petitioner to solve the educational barriers or equity in the Hispanic and Latino communities. Instead, they generally praised the Petitioner's skills and experience as an effective coordinator of community technology centers in the Dominican Republic, his commitment to his work, and his professionalism. We also reviewed several letters of interest: a letter from Reverend [redacted] of the [redacted] (expressing interest in hiring the Petitioner as a training coordinator for "information and communication technology courses" to serve at-risk youth in the faith community in [redacted] New York); a letter from Reverend [redacted] of [redacted] in the [redacted] New York (seeking to hire the Petitioner as "Training Coordinator for Information and Communication Technology" so that "our young people have the ability to start their own business" or "improve their employment"); and a letter from the [redacted] in [redacted] (seeking to hire the Petitioner as "Coordinator/Professor" for the technology courses offered to women in vulnerable situations). However, these letters of interest do not corroborate the specific nature or numerosity of projects to support the Petitioner's claims that his endeavor will have a broad impact in achieving equity in the STEM field for the Latino and Hispanic population across the country.

The Petitioner asserts that he will improve access to education in STEM field "for the Hispanic population of the United States," improve the "life quality of Americans while promoting innovation," and "positively impact the United States." But the Petitioner has not provided sufficient evidence detailing how his endeavor will operate on such a large scale nor does he provide detailed information about how his services will reach beyond the group of students who take his technology courses such that they would rise to the level of national importance. The Petitioner's assertions, without evidence to substantiate them, do not establish his eligibility.

In *Dhanasar*, we further noted 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 claims he provided "ample documentation to corroborate the economic benefits of [his] proposed endeavor by and through the personal statements submitted with the initial petition and RFE response." Although the personal statements make several claims of economic benefits, they are too attenuated to sufficiently show the endeavor's "substantial positive economic effects." For example, the Petitioner asserts "the effects [his] endeavor go beyond education technology access; it implicates a broader and atemporal improvement that shall enhance the business processes and economic growth of the Hispanic population in the U.S." Any basic economic activity has the potential to positively impact the economy and social welfare; however, the Petitioner has not offered a sufficiently direct connection between his proposed endeavor activities and any demonstratable societal welfare or substantial economic activities. Although the Petitioner indicated that in forming this community of students and addressing the equity in STEM education, he will work with various organizations, technicians, and facilitators, the record does not provide detailed plans for operating his program, i.e., a business plan, or its specific impact, aside from generalized claims and statements. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Based on the foregoing, we conclude that the Petitioner has not established the national importance of the proposed endeavor and has not met the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, 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.