U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37410132

Date: MAR. 21, 2025

Appeal of Texas Service Center Decision

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

The Petitioner 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. The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. However, the Director concluded that the record does not establish that a waiver of the job offer requirement, and thus of a 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 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:

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

Id.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. However, for the reasons discussed below, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. *See id.*

The Petitioner described the endeavor as a plan "to establish a startup in Virginia, dedicated to offering comprehensive IT solutions encompassing planning, sales, implementation, testing, monitoring, data management, business intelligence, network security, and specialized technical and cybersecurity consulting." The Petitioner submitted a business plan for his startup company, which describes the services it would provide in similarly generalized terms, such as "various hardware and software solutions to meet customer needs," including business intelligence, cloud computing, unified communication and collaboration, cybersecurity, server and storage solutions, technical support, remote access support, and training. The business plan broadly identifies its target clients as "small businesses with 1-499 employees in various industries" and "medium-sized companies with between 500 and 1,000 employees."

The business plan further provides financial projections for the first five years of the startup company's operations; however, its financial information is arbitrary and unsubstantiated. For example, the business plan estimates sales of $1,020,000 in the first year, increasing to $5,890,320 in the fifth year, based on expected earnings in three general categories of goods and services. However, the business plan does not explain why it anticipates generating the arbitrary amounts of revenue in the respective years to total those amounts in sales. For example, the $5,890,320 in expected sales during the fifth year of operations are anticipated to be derived from $3,832,920 in broad "IT consulting services," $842,400 in broad "service contracts," and $1,215,000 in broad "hardware sales." However, the business plan does not clarify what information technology consulting services the business would provide, what service contracts the business would perform, and what hardware the business would sell to theoretical clients to reach those very specific totals, and how the plan's preparer could have determined such information five years in advance. More generally, the business plan does not substantiate why it anticipates five-fold growth within the first five years of operations, such as what would change in its sales of goods and services from year to year, and why the plan assumes such changes would occur. We note in particular that the startup company's income would likely vary substantially if most of its clients are small businesses with one employee, as compared to what its income would be if most of its clients are medium-sized companies with 1,000 employees, and the record does not establish what the company's client composition more likely than not will be. *See Matter of Chawathe*, 25 I&N Dec. at 376 (describing a petitioner's burden of proof as establishing a claim is "more likely than not").

As another example of the arbitrary financial calculations on which the business plan is based, it anticipates hardware sales in only the third, fifth, seventh, and ninth through twelfth months of the

first year of operations; however, it does not explain why the business would be unable to sell hardware during the other months yet able to sell hardware during those particular months. Relatedly, although the business plan estimates gross margins and net profits during the first five years of operations, it does not substantiate how the very specific figures were calculated. For example, the business plan estimates operating at a loss during the third, fifth, and sixth months of the first year of operations, operating at a profit in the fourth and seventh through twelfth months, breaking even in the first two months; however, it does not clarify why it expects those particular results during those particular months. The business plan also estimates "taxes generated" for each of the respective years; however, given that the sales and expenses are unsubstantiated, the estimated taxes derived therefrom also reflect arbitrarily selected amounts.

The business plan further indicates that the startup company would employ 12 total workers—including the Petitioner as the company's managing director—during the first year of operations, increasing to 32 total workers in the fifth year of operations. (Elsewhere, the Petitioner refers to himself as the startup company's "CEO.") However, similar to the remainder of the business plan's estimations, the plan provides position titles and duty descriptions, but it does not clarify how many employees would have those position titles and perform those duties in any given year beyond the first year, instead providing arbitrary, unsubstantiated statements regarding abstract workers to be hired in the future. Stated another way, the business plan does not articulate what the 32 hypothetical workers would do in the fifth year of operations, and why the plan anticipates a need to hire such a specific number of employees to perform those unspecified duties. Based on the issues discussed above, the business plan's reliability and sufficiency are undermined. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the evidence offered in support of the visa petition).

The Petitioner also submitted documents relating to his business, an industry report providing generalized information regarding information technology consulting services, and a Regional Input-Output Modeling System (RIMS II) analysis. 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 may give an opinion 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.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

The RIMS II analysis anticipates "the creation of 200 direct and indirect jobs" based on a multiplier applied to an anticipated $16.32 million in total sales during the first five years of operations, along with an expected change in regional gross output, again applying a multiplier to the anticipated sales. However, neither the RIMS II analysis, nor the business plan, nor the remainder of the record substantiates the arbitrary determination of $16.32 million in total sales during the first five years of operations for the reasons addressed above, diminishing the probative value of the RIMS II analysis derived from that figure. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795.

The Director determined that the proposed endeavor has substantial merit. The Director acknowledged that the record contains a business plan, documents relating to the Petitioner's business, an industry report providing generalized information regarding information technology consulting services, and a RIMS II analysis. However, the Director observed that the proposed endeavor's "impact appears to be limited to the [P]etitioner's proposed self owned enterprise, and its direct clients," rather than having national importance. For example, the Director noted that the record does not establish "how the [P]etitioner's techniques, methodologies, or methods are sufficiently innovative or distinct from those in other similar businesses, to represent an improvement in the field with the potential to have a broad impact on the field." As another example, the Director noted that the record does not establish how the products or services the Petitioner proposes to provide may "extend beyond the immediate vicinity of the persons or entities utilizing them." The Director further questioned the probative value of the RIMS II analysis, given that it was based on "a broad prediction regarding the endeavor's sales, combined with a general set of figures associated nonspecifically to a wide industry and geographical area." Based on those and similar issues, the Director concluded that the record does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. The Director further determined that the record does not satisfy the third *Dhanasar* prong, without addressing the second *Dhanasar* prong. *See id.*

On appeal, the Petitioner reasserts that the business plan, the RIMS II analysis, and a generalized industry report establish that the proposed endeavor has national importance. The Petitioner states that, although his company's potential clients "will be the first to benefit from my services," his company's services will indirectly "generate ripple effects that positively impact the broader industry." He further asserts that his startup company has "potential . . . to catalyze advancements in cybersecurity and IT practices across the broader U.S. business landscape" through vaguely "unique cybersecurity measures and data tools . . . designed to meet the needs of our clients while also creating models that will benefit the industry as a whole." However, the Petitioner does not establish what advancements his company has the potential to catalyze, and how such a catalyzation would occur.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [individual] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 889-90.

We first note that the industry report in the record, titled "IT Consulting in the US," cannot—and does not—establish eligibility. The industry report is dated July 2024 and it discusses information such as "industry revenue in 2024 broken down by key product and service lines." However, the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, in 2023. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r

1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Because the industry report discusses information current as of 2024, after the Petitioner filed the Form I-140 in 2023, it provides a new set of facts that did not exist at the time of filing, which cannot—and does not—establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Moreover, even if the industry report could establish eligibility, which it cannot and does not, it does not discuss the Petitioner, the specific endeavor he proposes to undertake, and how the endeavor may have the type of broader implications indicate of national importance. For example, the industry report does not address how the specific endeavor the Petitioner proposes to undertake may have national or even global implications in the field of information technology, information technology consulting services, or any other field, such as those resulting from certain improved manufacturing processes or medical advances. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. As another example, the industry report does not discuss how the specific endeavor the Petitioner proposes to undertake may have significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area. *See id.* Therefore, even if the industry report could establish eligibility, which it cannot, it does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See id.*

We next note that the business plan in the record bears minimal probative value. As discussed above, its reliability and sufficiency are undermined by its arbitrary and unsubstantiated financial estimations, and its overly broad substantive generalizations. *See Matter of Ho*, 19 I&N Dec. at 591. In turn, as addressed above, the RIMS II analysis bears minimal weight, given that it is based on arbitrary and unsubstantiated financial estimations. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795.

The record supports the conclusion that the proposed endeavor may benefit the Petitioner, as the startup company's managing director (or its CEO), the potential yet unsubstantiated workers it may employ, and the company's potential clients—broadly ranging from employers of one worker to employers of 1,000 workers—that may receive the company's goods and services. However, the record does not support the conclusion that the proposed endeavor may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. For example, neither the business plan nor the remainder of the record establishes how the proposed information technology consulting services company may have national or even global implications within the field of information technology, information technology consulting services, or any other field, such as those resulting from certain improved manufacturing processes or medical advances. On the contrary, the generalized language in the business plan, and throughout the record, indicates that the startup information technology consulting services company would provide the same or similar goods and services already provided by other, typical information technology consulting services companies. Neither the business plan nor the remainder of the record establishes that the information technology consulting company would provide goods or services to an area with an inadequate supply of such goods and services. On the contrary, the business plan concedes that a threat to the company's success is that "[c]ompetition within the field is starting to intensify," indicating that a competitive supply is available.

As another example, neither the business plan nor the remainder of the record substantiates the estimations of either direct or indirect jobs the information technology services company would create. On the contrary, the business plan asserts it would employ an arbitrary number of workers, without specifying what those 32 workers would do in the fifth year of operations, which undermines the similarly arbitrary estimations of the company's goods and services those unsubstantiated workers would provide or sell, which in turn undermines the calculations of indirect jobs that would be created as a consequence. Relatedly, given that the business plan's financial calculations are arbitrary and unsubstantiated, the generalized "ripple effects" to which the Petitioner refers on appeal rely on underlying economic effects the record does not establish would occur. Therefore, the record does not establish whether the proposed endeavor has significant potential to employ U.S. workers or other substantial positive economic effects. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.