U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31067926

Date: MAY 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or 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 although the Petitioner qualified as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] The matter is now before us on appeal. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that 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

[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

[2] *See also 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 to be discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

The Petitioner proposed to "work as a Project Manager with expertise in ERP (Enterprise Resource Planning) Projects and Information Technology Management, focusing on integrating a company's areas and processes, implementing and managing ERP projects following PMI methodology and agile methodologies approaches like Scrum and Kanban." The Petitioner further stated that he "will lead IT teams and support large industrial operations using ERP TOTVS and SAP with ITIL practices." Moreover, he indicated that he intended to "help American companies grow and expand, transform business processes, develop new revenue sources, and expand their business globally, bringing revenue and profit from international trade to the United States."

The Director determined that the Petitioner's proposed endeavor was of substantial merit, and we agree. However, the Director concluded the Petitioner did not establish that his proposed endeavor had national importance.

On appeal, the Petitioner asserts that his proposed endeavor is of national importance, asserting that his endeavor not only reflects his "substantial professional experience and qualifications but also positions his contributions within the context of societal and economic advancement in the United States." Specifically, the Petitioner contends that his professional plan will benefit U.S. based companies by streamlining operations, fostering growth, and contributing to job creation and, therefore, that his proposed endeavor "aligns with broader societal welfare goals and government initiatives, making a compelling case for its national importance." The Petitioner further asserts that his "undeniably extensive documentation" shows his proposed endeavor will have global implications within the field and industry, and positively impact the economy.

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See id.* We further indicated that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated 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.

Upon review of the professional plan, the Petitioner has not established how the project management services he intends to provide to future employer(s) in the United States would have broader implications in the IT industry. He broadly states that his "unique project management skills" will "help American companies grow and expand, transform business processes, develop new revenue sources, and expand their business globally," but the record does not explain and provide adequate support to demonstrate how his proposed endeavor would help American companies grow, impact

business processes, or develop new revenue at a national level. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the Petitioner has similarly not established that his proposed endeavor stands to sufficiently extend beyond his future employer(s). Nor has he demonstrated that his work as a project manager would broadly enhance societal welfare at a level commensurate with national importance.

In addition, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. While the Petitioner claims that his proposed endeavor "will positively impact the economy" and "holds significant economic benefits for the United States," he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The Petitioner relies on market growth and industry trends, the COVID-19 pandemic, technology adoption, and support for remote work culture to highlight the potential impact of the proposed endeavor in the project portfolio management (PPM) market. However, the Petitioner does not sufficiently indicate or document how his proposed project manager position would have "significant economic benefits" on the PPM market such that this would have a potential prospective national impact on the U.S. economy. In addition, although the Petitioner asserts that his endeavor will "create new jobs," he does not clarify how many and has not offered sufficient evidence that his endeavor would result in substantial economic benefits through employment levels, tax revenue, or business activity.

Moreover, the Petitioner relies, in large part, on his more than 35 years of experience in the fields of IT and business to show the global significance of his proposed endeavor. However, the Petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work.

We also reviewed the Petitioner's letters of recommendation where the authors praise the Petitioner's abilities in the IT industry, his personal attributes, and an asserted asset to the workplace. However, the letters of recommendation do not offer persuasive detail concerning the impact of his proposed endeavor and how it would extend beyond his employer. As such, the letters are not probative in demonstrating the Petitioner's eligibility under the first prong of *Dhanasar*.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.[3] The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.