U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30336117

Date: MAY 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a chief financial and robotic process automation officer, 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, concluding that the record did not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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).

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 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;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. EB-2 Classification

The Director concluded that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. However, as the record does not otherwise establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[2]

B. National Interest Waiver

1. Substantial Merit

The first prong, 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. *Dhanasar* 26 I&N Dec. at 889. The Petitioner's proposed endeavor is to be chief financial and robotic process automation officer for hotels and resorts. He has included articles and reports on the importance of automation in the hospitality industry, information on the labor shortage in the hospitality industry, as well as a shortage of skilled information technology workers, and the value of small businesses. We conclude that the proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner states he will contribute to the U.S. economy by helping businesses in the hospitality industry implement robotic process automation technology to, "[i]mprove their financial structure, reduce costs, increase productivity, enhance business intelligence, and help companies operate more efficiently." The record contains evidence of the economic impact of COVID-19 on the hospitality industry, the current shortage of workers facing the industry, and how robotic process automation is a way to improve this economic issue in the hospitality field. *Dhanasar*

[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).

[2] *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 alternate issues on appeal where an applicant is otherwise ineligible).

states that an endeavor, may have national importance through "national or even global implications within a particular field." *Dhanasar* 26 I&N Dec. at 889. The business plan discusses the current market for the hospitality field and how robotic process automation technology stands to economically impact the industry. However, there is insufficient evidence on how the Petitioner and his specific endeavor would impact the hospitality industry. For example, the record explains how robotic process automation is used in the hospitality industry and the improvements that can be made with its increased usage; but the record doesn't establish how the proposed endeavor will support more than his direct employers and impact the field more broadly. 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 through his use of robotic process automation, may impact his direct employer, but the record does not establish his proposed endeavor would have the broader implications required by *Dhanasar*.

The Petitioner contends his proposed endeavor will allow companies to grow and expand, both locally and nationally which has ripple effects that significantly benefit other industries and the U.S. economy. *Dhanasar* states a proposed endeavor may also have "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890. The record does not establish specific ripple effects to other industries that would be impacted or other economic ripple effects that would be attributable to the Petitioner's proposed endeavor. In addition, the business plan does not establish significant potential to employ U.S. workers or other substantial positive economic effects. The business plan has a section entitled "Business Locations" that lists various regions of the United States and describes the hospitality industry in those regions; however, it does not discuss the Petitioner's proposed endeavor. While the record contains evidence of companies in Florida that are interested in the Petitioner's work, the record does not contain details to establish where and how he would carry out his endeavor, and therefore, we cannot analyze if his proposed endeavor will have, "substantial positive effects, particularly in an economically depressed area."

The Petitioner contends that his proposed endeavor will significantly impact and positively affect the hospitality and lodging industry which is essential to the viability of the U.S. economy. On appeal, the Petitioner asserts that the recommendation letters in the record show "[t]he benefits of his expertise and skills, as well as showing his significant contributions to the industry." Although the recommendation letters speak to the Petitioner's past experience in the industry, the letters are applicable to prong two analysis, on whether the Petitioner is well positioned to advance the endeavor. The proposed endeavor's economic impact has not been established through independent and objective evidence. The Petitioner relies on numbers from the U.S. hotel industry and the industry's impact on the economy to show his proposed endeavor's economic impact. The hotel industry's economic impact and Petitioner's own statements are not sufficient to demonstrate his endeavor has the potential to provide these benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376. The record does not establish that his proposed endeavor will prospectively impact more than the companies he will be serving as chief financial and robotic process automation officer for hotels and resorts. Similarly, 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. *Dhanasar* 26 I&N Dec. at 893.

The appeal also relies on industry articles and reports as a way of showing national importance. The industry reports and articles further explain the importance of automation in the hospitality industry, information on the labor shortage in the hospitality industry as well as a shortage of skilled information technology workers, and the value of the small businesses he would like to assist. The record also contains information on the economic impact of the hospitality industry as a whole. These articles are helpful for background information and in a substantial merit claim as discussed above, however, they are not evidence of the national importance of the Petitioner's proposed endeavor. It is the importance and prospective impact of the specific endeavor we must analyze and not the industry itself.

Finally, the record contains an expert opinion letter that reiterates many of the same arguments the Petitioner makes that have been addressed above regarding the hospitality industry, the economic possibilities, and the Petitioner's experience in the field. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.