U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31134766

Date: MAY 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish 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. 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.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

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

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of their proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner submitted a business plan for their company [redacted][1] This business plan includes industry and market analyses, information about their company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that their company would employ 15 personnel in year one, 28 in year two, 48 in year three, 70 in year four, and 101 in year five, but they did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while the Petitioner's plan offers revenue projections of $1,079,347 in year one, $2,014,781 in year two, $3,468,302 in year three,

[1] The Petitioner's business plan refers to the name of their company as [redacted] interchangeably.

$5,022,561 in year four, and $7,281,994 in year five, they did not adequately explain how these sales forecasts were calculated.

The record includes information about the occupational outlook for computer and information systems managers, careers in the field of information technology services, trends in the information technology sector, market research and competitive analysis, the value of small businesses to local economies, the benefits of small businesses to the U.S. economy, the economic effects of the coronavirus pandemic, and the value of information technology in business. In addition, the Petitioner provided articles discussing the value of information technology infrastructure, the changing role of information technology in the future of business, the contribution of information technology to business success, the essential role of logistics in business strategy, ways small businesses use technology to level the playing field, the value of logistics during the COVID-19 pandemic, and the way logistics plays a crucial role in the global economy. They also submitted information about the software and information technology industry, factors that contribute to U.S. economic growth, governmental policies' effect on economic growth, the benefits of logistics to business growth, the value of logistics in the modern world, the U.S. software engineer shortage, solutions for addressing the information technology skills shortage, recommendations for addressing the U.S. software developer shortage, and foreign-born STEM workers in the United States. The record also contains articles about the ways GPS benefits the transportation industry, the value of the trucking industry, trucking economics, the benefits of U.S. trucking business, the effect of freight transportation on the U.S. economy, challenges faced by big-rig drivers, the impact of U.S. inflation and driver shortages on the trucking industry, and the GPS Innovation Alliance. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters of support from J-R-, E-C, I-R-B-, C-A-D-, E-D-S-, G-F-B-, and V-S- discussing their information technology capabilities and business experience. The Petitioner's skills, knowledge, and prior work in their field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also submitted an "Expert Opinion Letter" from B-W-, a professor of computer science and cyber security at G-F-U-, in support of their request for a discretionary waiver of the job offer requirement, and thus a labor certification, in the national interest. B-W- contends that the Petitioner's proposed work is of national importance because their generic occupation of information technology consultant and the industry in which they work stands to contribute to our nation's economic growth and security. The issue here, however, is not the national importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The letter from B-W- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work operating a software development and tracking technologies consulting company offers broader implications in their field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of their proposed endeavor. The Director stated that the Petitioner had not

demonstrated that their undertaking stands to have broader implications for the field or industry, beyond the clients they would serve. The Director also indicated the Petitioner had not shown that their proposed work will offer "substantial positive economic effects."

In their appeal brief, the Petitioner contends that their proposed endeavor will have substantial economic impact and generate significant employment. They assert that their undertaking stands to help businesses grow and expand and therefore will positively impact the U.S. economy. The Petitioner further states that their proposed work will focus on businesses operating in the transportation and logistics sectors, providing them with tracking technology solutions aimed at improving operational costs. In addition, the Petitioner claims that their undertaking will offer innovations and broad implications to the U.S. business and technology arena, particularly through the development and implementation of new specialized IT solutions and systems. Furthermore, the Petitioner avers that their proposed work will increase tax revenues for federal and state governments, create a substantial number of indirect job opportunities, and provide substantial economic benefits.

The Petitioner also asserts that their undertaking stands to help alleviate the driver shortage in the trucking industry, but they do not explain how the services offered by this company will address this shortage. Further, while the Petitioner's RFE response included articles discussing the U.S. software engineer shortage, solutions for addressing the information technology skills shortage, and recommendations for addressing the U.S. software developer shortage, we are not persuaded by the claim that their proposed endeavor has national importance due to the shortage of professionals in the information technology and trucking industries. Here, the Petitioner has not established that the Petitioner's proposed endeavor stands to impact or significantly reduce these claimed national shortages. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

As stated above, in determining national importance the relevant question is not the importance of the field, 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 Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of their work. While the Petitioner's statements reflect their intention to provide valuable business consulting and tracking technology services for their company's clients, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of their proposed endeavor rises to the level of national importance. 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 their field more broadly. *Id.* at 893. Here, we conclude the Petitioner has not shown that their proposed endeavor stands to sufficiently extend beyond their company and its clientele to impact the transportation industry, the

information technology consulting field, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor they propose to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, they have not demonstrated that their company's future staffing levels and business activity stand to provide substantial economic benefits. While the Petitioner claims that their company has growth potential, they have not presented evidence indicating that the benefits to the regional or national economy resulting from their undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. In addition, although the Petitioner asserts that their endeavor will generate significant employment and create a substantial number of indirect job opportunities, they have not offered sufficient evidence that their endeavor offers a substantial economic benefit through employment levels, tax revenue, or business activity.[2]

III. CONCLUSION

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of their proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding their eligibility under the second and third prongs outlined in *Dhanasar*. *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 alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.

[2] As previously indicated, the Petitioner did not elaborate on their business plan's staffing projections or provide sufficient evidence supporting the need for the additional employees. Nor did they provide sufficient documentation in support of their indirect jobs claim. In addition, they did not adequately explain how their business plan's sales revenue forecasts were calculated.