U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31141256

Date: MAY 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial engineer, seeks classification as a member of the professions holding an advanced degree. *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. 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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 a national interest waiver, a petitioner must first show eligibility 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 EB-2 eligibility, 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,[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding the equivalent of an advanced degree as defined at 8 C.F.R. § 204.5(k)(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 Director determined that the Petitioner had established the substantial merit of the proposed endeavor and that he is well positioned to advance that endeavor, but had not established the national importance of the proposed endeavor or that waiving the job offer requirement would, on balance, benefit the United States.

Before arriving in the United States, the Petitioner studied and worked in Brazil. The Petitioner earned a bachelor's degree in production engineering in 2010. Between 2006 and 2021, his résumé lists employment for a machinery rental company, a service provider in the oil and gas industry, and a steel fabrication company. In November 2021, he became the managing director of a company that applies gold plating to jewelry. The Petitioner arrived in the United States as a B-2 nonimmigrant visitor in June 2022.

In a "Professional Plan & Statement" submitted with the petition, the Petitioner stated:

> My great expertise lies strongly in the management and execution of production engineering works, mobilizing resources and managing large and diverse teams, under all conditions.
>
> My knowledge and experience in the Oil, Civil Construction, and Metallurgical fields will be very valuable to American companies pursuing the closure of new contracts, and to the development of new business opportunities.
>
> . . . .
>
> I propose to use my skills and knowledge . . . to work as an Industrial Engineer/ Entrepreneur in the US. I intend to study more about the electroplating market here in the US. . . . I intend to open, at first, a small business in the sector of electroplating that generates an average of 10 direct jobs.
>
> . . . .
>
> . . . A small production plant in the area of gold plating in semi-jewelry . . . can . . . [achieve] a capital turnover around $70,000.00 per month.
>
> . . . .

> [M]y goal is to . . . lead companies in developing new metallurgical and engineering projects, ultimately benefiting the U.S. economy.

In a request for evidence (RFE), the Director asked for more details about the proposed endeavor. In response, the Petitioner submitted a business plan for a company that would provide "production planning and scheduling consultancy," "process improvement," "resource management," "quality control and assurance consultancy," "cost analysis consultancy," "manufacturing process optimization consultancy," "equipment and facility design consultancy," and "supply chain management."

The 71-page business plan does not appear to include any mention of the Petitioner's previously stated intention to open an electroplating business. Much of the business plan consists of background information about engineering, management consulting, and other subjects. Some of this information pertains to activities such as mining, residential construction, and public transportation, with no indication that the Petitioner's company would pursue those activities and no other explanation of how the information is relevant to the proposed endeavor.

The Petitioner did not acknowledge or explain the substantial differences between the "Professional Plan" submitted with the petition and the business plan submitted later in response to the RFE. A petitioner must meet eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

The first *Dhanasar* 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An 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 889-890.

The Petitioner must establish the national importance of the specific proposed endeavor; it cannot suffice for the Petitioner to establish the overall importance of a particular subject, occupation, or field. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See, generally,* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

In his initial statement, the Petitioner stated:

> My plan is to continue applying assembly methodologies that can be performed with less impact on society. . . . With my experience in leading these projects for more than 10 years . . . , I have developed techniques to acquire quick adaptability and structured thinking in quickly interpreting the environment and conditions of places, in order to organize and

> create winning strategies in the search for applicable solutions in practice, for each type of circumstance experienced.
>
> In this capacity, I aspire to add to the formulation of new leaders and the consolidation of profitable results in the search for performance improvement and the implementation of new visions and solutions from small situations to large assembly operations. . . .
>
> . . . .
>
> I intend to improve productivity, reduce waste, and increase results, bringing a positive impact in the engineering sector, which is one of the largest generators of employment in the country. Through my work, I can contribute to socioeconomic needs in the United States and improve business development and facilitate commercial activities as well as societal activities throughout the United States. My techniques can be applied to a wide range of industry areas, and through my skills in creating innovating technological methods. I can enhance operational efficiency and quality, allowing me to impart my contributions in a wider, and even global, scale.

The Petitioner did not explain how he would effect large-scale industrial engineering reforms by operating "[a] small production plant in the area of gold plating."

The Petitioner stated that "Industry Reports and Articles" provided evidence of the national importance of his proposed endeavor. The submitted materials include reports about engineering, manufacturing, and immigration, and a listing from the Department of Labor's *O*NET Online* website, providing occupational information about industrial engineers. The submitted materials provided no information about the specific proposed endeavor.

In an advisory letter, a professor of manufacturing engineering at [redacted] stated that industrial engineers "look to reduce production costs, improve efficiency, improve the quality of services and products, make sure workers stay safe and healthy, and protect the environment." These traits are inherent to the Petitioner's occupation, but do not show that the Petitioner's specific proposed endeavor – as opposed to the collective impact of all industrial engineers – has national importance.

The author of the advisory letter also asserted:

> [The Petitioner] can establish a company and operate as a consulting service offering advisory services to business clients operating in a diverse range of production industries with a focus on oil, civil construction, and metallurgical companies. . . .
>
> [The Petitioner] will partner with investors, business owners, managers, and other employees to identify the most suitable solutions for each company according to its specific needs and plans.

The advisory letter does not appear to discuss the same proposed endeavor that the Petitioner described in his own introductory statement. The advisory letter does not mention the Petitioner's original plan to establish a small gold-plating business. When he first filed the petition, the Petitioner discussed the

wider applicability of unspecified "techniques" but did not specify any intention to operate a consulting service for other companies.

In the RFE, the Director stated that the Petitioner submitted "generalized information" that did not explain "how the specific endeavor will have substantial positive economic effects that rise to the level of national importance." The Director acknowledged the Petitioner's intention "to continue applying assembly methodologies," but the Director concluded that "the petitioner never expands further into this plan. There is no mention of how the work they will perform would reach a level considered national in scope." The Director stated: "The cover letter and plan seem to only focus on the petitioner's ability to perform the role of an industrial engineer, and the articles only stand to highlight the substantial merit of the industry at large."

The Director requested "[a] detailed description of the proposed endeavor and why it is of national importance." In response, the Petitioner submitted a business plan for a consulting company "through which he will leverage his industrial engineering and business development knowledge to spur significant economic benefits for the country." The business plan indicated that the company would open its first office in [redacted] Florida, in the first year, with additional offices in [redacted] Georgia in the third year and in [redacted] Alabama in the fifth year, hiring "a total of 28 employees" in the first five years. The business plan does not indicate that the company would "focus on oil, civil construction, and metallurgical companies" as indicated in the advisory letter submitted earlier, or on "developing new metallurgical . . . projects" as the Petitioner himself previously stated.

The Petitioner submitted additional background information about the oil and gas industry and various types of engineering. These materials do not directly address the Petitioner's specific proposed endeavor or establish its national importance.

The Director denied the petition, acknowledging the financial and employment information in the business plan but concluding that the Petitioner had not established the broader implications of the proposed endeavor. The Director noted the Petitioner's submission of information about "various sectors and industries the company might be involved with," but concluded that the information does not "demonstrate how the company would broadly impact these sectors." The Director determined that the Petitioner had submitted "no evidence that shows how the company can benefit any entity other than itself and its potential clients."

On appeal, the Petitioner states that he "has already proved his ability to generate benefits of significant importance in the United States, as explicitly shown by his field-related projects in the U.S." The Petitioner does not elaborate on this claim or identify any such projects that he has undertaken in the United States. When he filed the petition, the Petitioner did not claim any current or past employment in the United States.

The Petitioner states that he had submitted evidence of "the substantial size and potential of the engineering services, management consulting, and supply chain management markets," which "collectively generate over $700 billion in revenue annually." The issue is not the aggregate size of those markets, but rather the importance of the Petitioner's specific proposed endeavor, working with individual customers within those markets.

The Petitioner asserts that the job creation from his proposed endeavor "can have ripple effects beyond the immediate locale." The Director already took these "ripple effects" into account, by acknowledging projections that the proposed endeavor "can possibly" create approximately 154 "indirect jobs." After considering this claim, the Director concluded that the Petitioner had not submitted "independent and objective evidence demonstrating that the petitioner's work has potential implications that are of national importance." General statistics about various industries do not suffice in this regard.

The Petitioner asserts that his "expertise in industrial process and supply chain management consulting addresses critical challenges faced by various industries. By enhancing efficiency and reducing waste, the [Petitioner's] work can lead to substantial improvements in productivity, cost savings, and environmental sustainability – issues of national importance." These goals are important in the aggregate, but the Petitioner, on appeal, does not explain how his specific proposed endeavor will have these effects on a nationally significant level.

The Petitioner makes two apparently conflicting arguments, asserting that the proposed endeavor will create new jobs for skilled workers, while also contending that a claimed shortage of workers in the field justifies a waiver of the job offer requirement. The Petitioner has not adequately explained how his endeavor will increase the supply of such workers, or how he will be able to fill the new jobs that he seeks to create in the face of such a shortage.

For the above reasons, we agree with the Director that the Petitioner has not met his burden of proof to establish the national importance of his proposed endeavor. Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the third *Dhanasar* prong.[2]

The Director concluded that the Petitioner had satisfied the second *Dhanasar* prong, and therefore there was no adverse finding regarding that prong for the Petitioner to contest on appeal. Nevertheless, beyond the Director's decision, we note issues of concern.

To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

As noted above, the Petitioner very substantially revised the proposed endeavor in response to the RFE, changing his plans from an electroplating shop that would employ 10 workers to three engineering consultancy offices that would employ 28 people. This very significant change casts doubt on the extent to which the Petitioner had made any concrete plans to implement his proposed endeavor prior to the petition's filing date. Consultancy plans drawn up after the Petitioner received the RFE cannot show that he was well positioned to advance the proposed endeavor on the filing date.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

When he filed the petition, stating his intention to open an electroplating shop, the Petitioner had about seven months of experience running such a business. He claimed no experience running an industrial engineering consultancy firm as described in his revised endeavor.

Furthermore, the Petitioner's claimed employment history contains an apparent inconsistency. Such an inconsistency is material to the petition because an individual's experience is one factor we consider when evaluating whether the individual is well positioned to advance their proposed endeavor.

On his résumé and on ETA Form 9089 Part B, Statement of Qualifications of Alien, the Petitioner claimed to have worked for [redacted] located in [redacted] from February 2006 to January 2017, and for [redacted] located in [redacted] from October 2011 to December 2014. The Petitioner stated that his positions with both companies were consistently full time, 40 hours per week. A letter from Tetra indicated that the Petitioner worked 44 hours per week; a letter from [redacted] did not specify the hours worked.

[redacted] is about 90 miles northeast of [redacted] The Petitioner therefore claims to have worked two full-time jobs, 90 miles apart, at the same time, from 2011 to 2014.

We also note that the Petitioner claims to have held three different titles at [redacted] administrative assistant from 2006 to 2011, contract manager from 2011 to 2015, and field engineer from 2015 to 2017. But the letter from the company indicates that the Petitioner was a "partner" and "manager" from 2006, when the Petitioner was 18 years old, to 2017. The record does not include contemporaneous documentation such as payroll records that might shed more light on the nature of the Petitioner's employment with the company and resolve these apparently inconsistent descriptions.

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.