U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31069981

Date: MAY 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a systems 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, 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.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established 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. 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate 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 that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[1] *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree, and the record supports that determination. Accordingly, the remaining issue to be determined on appeal 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.

In denying the petition, the Director concluded that the Petitioner did not demonstrate that he meets any of the three *Dhanasar* prongs. On appeal, the Petitioner maintains that the evidence was sufficient to demonstrate that he meets all three prongs under the *Dhanasar* framework and otherwise warrants a national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a letter of support, counsel for the Petitioner claimed that he was a systems engineer "with over 40 years of experience in communication and information technologies" who had contributed to the IT field in his home country of Colombia. Counsel described the Petitioner's proposed endeavor as follows:

> [T]o provide easy, affordable, and short-term business management IT solutions such as ERP/CRM (Enterprise Resource Planning/Customer Relationship Management) for small and medium sized companies (SMEs) in the U.S. in order to strengthen their internal processes, efficiency, and expand their market while also improving customer relationships through digital tools. In addition, through his undertaking, he will provide and implement GRP/CRM (Government Resource Planning/Customer Relationship Management) IT services in governmental and public administration institutions to improve internal processes while assuring transparency in public resources.

In an action plan submitted with the petition, the Petitioner stated that his proposed endeavor is oriented on two fronts. Specifically, he stated:

> The first is the provision of ERP/CRM enterprise solution implementations services in the niche of small and medium sized companies in the United States of America. This segment of companies and the economy require first to strengthen their internal processes to be more agile and expand their market, then improve customer relationships by offering a number of tools that the digital world offers today. The high costs and complexity of implementation have prevented them from accessing this type of technology. Therefore, offering our services at a low cost, short term and easily, is

the bridge that will facilitate their growth and therefore that of the economy. Secondly, to provide and implement government or public administration GRP/CRM solutions, promoting a state and local government service to citizens, supporting the improvement of internal processes to make them agile, simple, and easy, and ensuring transparency in the management of public resources. All of the above in an ecosystem, where state, business and citizens interact harmoniously in a smart city model.

In addition to his action plan, the Petitioner submitted a personal statement, copies of his academic credentials, letters of support and recommendation, and industry articles and reports.

The Director determined that although the Petitioner's proposed endeavor had substantial merit, his initial filing did not establish that the proposed endeavor had national importance. The Director observed that the Petitioner's evidence did not provide specific insight as to what he intends to do in the United States, or that his proposed endeavor would have potential prospective impact, significant potential to employ U.S. workers, or other substantial positive economic effects. As a result, the Director issued a request for evidence (RFE) that requested a detailed description of the Petitioner's proposed endeavor in order to evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner summarized his proposed endeavor, stating that he intends "to leverage [his] extensive experience and knowledge of 35 years in construction and implementation of ERP, GRP, and CRM software, as well as the construction and implementation of software for government finances and creation/management of ICT (Information and Communications Technology) solutions in order to develop business models that promote the growth and implementation of ERP software among United States companies and small businesses, which constitute 99.9% of all companies according to the Small Business Administration (SBA)." He also stated that he intends to perform the following activities:

- Elaborate a rigorous market study of the small business' niche, and the competition in the ERP software industry.
- Create a business plan elaborated in sufficient detail to socialize and promote it with potential strategic allies.
- Strategic alliances with American companies with strengths in consulting, education and training, software engineering, computer infrastructure services, and marketing services.

In addition, he submitted an updated personal statement and additional testimonial letters and industry articles in support of his eligibility for a waiver of the job offer.

In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that his proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework. On appeal, the Petitioner provides a brief

emphasizing his qualifications and asserting that the evidence of record establishes the national importance of the proposed endeavor.

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.

Preliminarily, we note the Petitioner's assertion on appeal that the Director abused their discretion in failing to address all evidence, citing *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) in support. The court in *Buletini*, however, did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992)); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). We conclude the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

Upon review of the record, we agree with the Director that the Petitioner has not provided sufficient documentation explaining how the proposed endeavor is of national importance. While the Petitioner's statements and evidence reflect his intention to construct and implement various types of software for small and medium-sized businesses, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his 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 his field more broadly. *See Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his clients to impact the business management software market or the U.S. economy more broadly at a level commensurate with national importance.

Throughout the record and again on appeal, the Petitioner points to his education, skills, knowledge, and record of success in his field. The Petitioner also provided several letters of support that discuss his experience in the field of software engineering.[2] The Petitioner's knowledge, skills, and experience in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national

[2] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

We note the Petitioner's submission of articles, reports, and information on government initiatives pertaining to the role of ERP systems in modern business operations and trends in the IT industry. In determining national importance, however, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* at 889. The Petitioner must demonstrate the national importance of his specific, proposed endeavor of implementing ERP and related software rather than the importance of the field of software engineering. While we note that the findings in the publications support the Director's determination that the proposed endeavor has substantial merit, they do not establish that the endeavor has national importance.

The Petitioner submitted letters of support that speak to his character and his talents in the field. For example, a letter from [redacted] endorses the Petitioner, acclaims his development of a proprietary software product, and asserts that his expertise in the field of business management software will greatly contribute to the U.S. economy. A letter from [redacted] similarly compliments the Petitioner's abilities as a software engineer and recommends him for the requested classification. A letter from [redacted] discusses the Petitioner's contributions in the field software and data engineering and notes the positive impact his work has had on the [redacted] Although the writers praise the Petitioner's achievements and abilities as a software engineer, none of the authors discuss the Petitioner's specific proposed endeavor. Instead, the authors primarily focus on the Petitioner's character, skills, and past achievements. Neither the letters nor any other evidence within the record provide insight into how the Petitioner's endeavor to implement business development software will positively impact the region or the industry beyond his clients. Again, 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." *Id.*

The Petitioner's action plan includes an overview of the industry and a proposed organizational chart for a potential team of individuals he hopes to assemble in the future. The action plan, however, is devoid of a timeline or documentation such as industry and market analysis, business strategies, and financial forecasts and is therefore insufficient to demonstrate that the specific endeavor the Petitioner proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, while the action plan contains a general proposal for his future work in the field of business development software implementation, it does not identify a specific target region or demonstrate that his endeavor's future staffing and business activity stands to provide substantial economic benefits in the United States. Further, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, the Petitioner has not offered sufficient evidence that he would employ a significant population of workers or that his endeavor would offer a specific region or its population a substantial economic benefit through employment levels or business activity.

We recognize the value of software engineering and business development software implementation; however, merely working in an important field is insufficient to establish the national importance of

the proposed endeavor. We conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his clientele to impact the business development software field or the U.S. economy more broadly at a level commensurate with national importance, as his evidence and statements are not sufficient to demonstrate his endeavor has the potential to provide his claimed economic and business development benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Because the documentation in the record does not establish the national importance of his 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 his eligibility under the remaining *Dhanasar* prongs. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he 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.