U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34836399

Date: NOV. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer, seeks employment-based second preference (EB-2) immigrant classification as either 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 the record did not establish that the Petitioner's eligibility for the requested national interest waiver. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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 establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies as an advanced degree professional, but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework and dismiss the appeal.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The record reflects that the Petitioner intends to work in the United States as a software developer. In the initial filing of the petition, the Petitioner submitted a letter of support summarizing his experience in the field, and discussing the importance of software development and the technology field, which the Petitioner claimed, "will always be one of the priorities of any nation, [and is] of vital importance for the population's life quality and economy." In the Petitioner's letter of support accompanying his petition he indicated several supporting documents were included within the filing, including a personal statement, a professional plan, and evidence of his education and experience. Notably, however, according to USCIS records, the supporting documents did not accompany the initial filing. Accordingly, the Director issued a request for evidence (RFE) informing the Petitioner that the supporting evidence listed in the record was not submitted with the filing. In the RFE, the Director listed the documentation received by USCIS, inclusive of the Petitioner's Form I-140, Immigrant Petition for Alien Workers, and accompanying letter of support, but incorrectly indicated that the Petitioner "did not" submit the documents listed. Nonetheless, the Director's RFE did correctly inform the Petitioner that the supporting documents listed in the letter of support did not accompany the filing.

In response to the Director's RFE, the Petitioner submitted the supporting documentation, which included his personal statement, professional plan, and recommendation letters. In his professional statement, the Petitioner asserted his plans "to come to the United States to increase [his] technical and professional skills and knowledge [on] systems development, new technologies and new methodologies, as well as producing new projects in large companies." And he asserted his intent to "offer his knowledge and expertise to a multinational IT company," and eventually pursue a Ph.D. in

[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).

software development. His professional plan also included various employment statistics and general background information on the software development field and related professions. In support of his endeavor, the Petitioner also submitted an expert opinion letter and several recommendation letters from former colleagues and professors commending his skills in software development as well as his professionalism in his past positions.[2]

Upon review, the Director denied the petition, concluding that the Petitioner did not establish eligibility for the requested national interest waiver under the *Dhanasar* analytical framework. Specifically, because the Director concluded that the Petitioner did not provide specific insight into his intended plans in the United States, the Director determined that the Petitioner did not establish the substantial merit of their endeavor. Likewise, regarding the national importance of the endeavor, the Director concluded that the Petitioner had not established his work would result in broader implications to the field, or otherwise result in a significant potential to employ U.S. workers or other substantially positive economic effects contemplated in *Dhanasar*.

On appeal, the Petitioner dedicates significant discussion to the claimed deficiencies in the Director's RFE, and asserts that the Director erred in denying the petition without first issuing a second RFE allowing the Petitioner to address any deficiencies in the initial evidence and present new evidence. Specifically, the Petitioner states he "did not have a chance to explain his specific proposed endeavor through a [r]esponse to the RFE . . . but to address that matter, the statement sent in the initial [filing] elucidates the particular significance and substantial merit of the petitioner's insights on a national level." And the Petitioner states that "essentially [his] proposed initiative is geared towards offering information technology solutions and services to both private and public enterprises reliant on computerization."

As a preliminary matter, although the regulation at 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE, the regulation permits the Director to deny a petition for failure to establish eligibility without first having to request evidence regarding the ground or grounds of ineligibility identified by the Director. As such, even if the Director had erred as a procedural matter in not issuing a second RFE after receiving the Petitioner's initial evidence, it is not clear what remedy would be appropriate beyond the appeal process itself, which provided the Petitioner another opportunity to supplement the record and establish that he is eligible for the requested national interest waiver. While the Petitioner submitted a brief on appeal, he did not supplement the record with new evidence.[3] Moreover, a petitioner is required to establish eligibility for the benefit sought at the time of filing.[4]

Turning to our de novo review of the record, although the Petitioner's statements in the record reflect his intention to generally provide software development to U.S. companies, we agree with the Director

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

[3] The Petitioner's appellate brief makes mention of an updated personal statement; however, an additional statement was not provided with the appeal.

[4] A petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). This principle is codified in the regulation at 8 C.F.R. § 103.2(b)(1), which states in pertinent part that a "petitioner must establish that he or she is *eligible for the requested benefit at the time of filing the benefit request* and must continue to be eligible through adjudication." [emphasis added].

that the record does not sufficiently explain the Petitioner's specific endeavor to demonstrate the substantial merit and national importance of his proposed endeavored. A petitioner must identify "the specific endeavor that [he] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889; *see generally* 6 USCIS Policy Manual F.5(D)(1) ("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.") And we must rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance.

On appeal, the Petitioner asserts that his proposed endeavor of working in the software development field "holds paramount national importance for the United States, given its profound impact on technological innovation, economic growth, national security, education, global leadership, quality of life, and adaptability." But the Petitioner's claims on appeal primarily rely on the importance of the software developer occupation and related fields, rather than the prospective impact of his specific endeavor. In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

The Petitioner asserts that his expertise is "poised to contribute to the seamless operations of industries, the advancement of technology, and, consequently, will leave a lasting impact on the North American national landscape." However, generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). 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. Similarly, the Petitioner's general assertions of providing services "geared toward supporting businesses reliant on computerization," do not establish that the Petitioner's proposed endeavor stands to sufficiently extend beyond his potential employer(s) and/or customers to impact the field more broadly at a level commensurate with national importance.

And we agree with the Director that the Petitioner has not demonstrated that his intended employment as a software developer has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the Petitioner asserts on appeal that his endeavor would have substantial positive economic effects, he does not provide sufficient evidence to substantiate these assertions, and instead continues to rely on the potential economic benefits of the software development field in general. Without sufficient information or evidence regarding any projected economic impact or job creation directly attributable to his future work (as opposed to the general economic impact of the software development industry), the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

The testimonial evidence in the record, including the expert opinion letter and the letters of recommendation, also provide little probative value in establishing the national importance of the Petitioner's endeavor. For example, in their expert opinion letter, Dr. M-H- primarily focuses on the Petitioner's background as well as the impact of the software development field collectively, and the collective benefit of software development and technological advancements, rather than the Petitioner's proposed work. But, beyond broad assertions that the Petitioner's experience equips him with the necessary knowledge to provide software development services to "drive technological advancements," and "introduce innovative software solutions," Dr. M-H- does not explain how these services provided to prospective employers and/or clients would broadly impact the field. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). And while we recognize that the Petitioner has contributed to the development of software for his former employers, a 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 the national importance of his proposed endeavor.

For the reasons discussed, the evidence does not establish the substantial merit or national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning eligibility under *Dhanasar's* second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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.