U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33942301

Date: NOV. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a telecommunications engineer, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional as well as a national interest waiver of the job offer requirement attached to this classification. 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 the Petitioner did not establish eligibility as an advanced degree professional or for a national interest waiver. 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 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.

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;

[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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

A. EB-2 Visa Classification

The Director determined that the Petitioner does not qualify as an advanced degree professional. Since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether he qualifies for EB-2 classification as an advanced degree professional for future consideration should the need arise.[2]

B. Substantial Merit and National Importance

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Id. 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. Id. 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. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

We agree with the Director's conclusion that the proposed endeavor has substantial merit as it falls within the above-mentioned range of areas of substantial merit. Therefore, we will first identify the Petitioner's endeavor as shown in the record and then evaluate the Petitioner's evidence in support of the endeavor's national importance.

The Petitioner asserts that his proposed endeavor is to "launch and develop a recently formed U.S.-based Company that will contribute to the country's economy, society, and American citizens' lives through the consulting and training services in private projects as well as government programs to organizations in charge of deploying infrastructure and technology for high-speed internet in the United States." He contends that his "[company's] goal is to develop into an organization that will be recognized as a reference on matters related to the internet and broadband networks segments, with the purpose of increasing the area of Internet coverage in places that are not yet served with high speeds, improving data security, providing advice on design and development of processes for network

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

administration, as well as training and updating in techniques for the deployment and implementation of new wireless technologies." He further contends that "[t]he Company's overarching objective will be to support and continuously contribute to improving the American citizens' and SME businesses' internet network connections and tech infrastructure while bringing efficiency and stability to their daily lives and business operations," which "will serve to stimulate the country's sustainable growth, protect value chains and navigate uncertainty by building trust and bolstering tech-driven resilience to disruptions and threats." In addition, he states that he "will seek to establish his new U.S. Company within or near some of the economically distressed communities and historically underprivileged areas in the U.S. also known as Opportunity Zones and HUBZone areas." The Petitioner's business plan indicates that by its fifth year, his company will have 14 employees, not including independent contractors, and an estimate of $1.56 million in sales revenue.

On appeal, the Petitioner asserts that the Director erred by requiring that he demonstrate that his proposed endeavor stands to impact the regional or national population at a level consistent with national importance. He contends that in Dhanasar, we stated that an undertaking may have national importance because it has national or global implications, but it is not a mandatory requirement. He further contends that the Director did not analyze his case under the preponderance of the evidence standard, as required.

Here, the Petitioner relies primarily on the importance of the U.S. technology industry, particularly the mobile communications and wireless industry, to the U.S. economy. However, this misapplies the Dhanasar framework. 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." Dhanasar, 26 I&N Dec. at 889. In Dhanasar, 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. A local physical therapy business and a shortage of physical therapists in the United States does not render the proposed endeavor nationally important under the Dhanasar framework.

The Petitioner's business plan provides a generalized description of the company's marketing and growth strategy and projected sales and claims that "[t]he prospective inclusion of [his] substantial professional expertise in the U.S., gained by accumulating a vast international work experience in developing and implementing large-scaled telecommunications projects, with an emphasis on internet and broadband networks, will immensely enrich the overall Tech Industry in the U.S., and will contribute to addressing the problem of rapidly rising demand for distinct Tech professionals in the country." While the Petitioner contends that "he can use his vast knowledge and experience and work towards increasing the area of Internet coverage in places not yet served with high speeds, generate more direct and indirect job opportunities, as well as help American organizations to save resources, increase the quality of their services, and improve their networking systems," these projections are not supported by relevant or probative evidence, details showing their basis, or an explanation of how they will be realized, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the national economy or the economy of the [redacted] Florida region, the intended location of his company. Generalized conclusory statements that do not identify a specific impact to

the field have little probative value.[3] Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. Further, the Petitioner has not demonstrated that his Florida-based consulting business would benefit an economically depressed area. The record also does not indicate by a preponderance of the evidence – that it is more likely than not – that the Petitioner's endeavor "will serve to stimulate the country's sustainable growth, protect value chains and navigate uncertainty by building trust and bolstering tech-driven resilience to disruptions and threats" or "transform the lives of American citizens living in rural and isolated, difficult to access areas with no or poor internet network connections." Broad statements and projections regarding the potential growth of the Petitioner's business – based upon his experience as a telecommunication engineer and the growth and importance of the wireless industry– do not demonstrate the prospective impact directly attributable to his proposed endeavor or establish how his company will impact the industry beyond his customers and the operations of his business. In the end, the economic benefits that the Petitioner claims will result from his endeavor depend on numerous factors and the Petitioner does not offer a sufficiently direct evidentiary tie between his proposed endeavor and the claimed economic results.

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs.

ORDER: The appeal is dismissed.

[3] *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).