U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34875104

Date: NOV. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) executive, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 a waiver of the required job offer, and thus of the labor certification, would be in the best 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 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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

II. ANALYSIS

The Petitioner proposes to start and serve as the chief executive officer (CEO) of an IT-focused consulting service company, [redacted] This company aims to "support the growing demand for professionals by providing specialized and technical courses, seminars, and workshops to improve [i]nformation [t]echnology [c]onsultants' knowledge."

In the denial decision, the Director determined the Petitioner qualifies for the underlying EB-2 visa classification as an advanced degree professional. However, the Director found the Petitioner did not establish eligibility for a national interest waiver as he did not demonstrate the national importance of the proposed endeavor; that he is well-positioned to advance the endeavor; or 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.

A. 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. 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. In *Dhanasar*, we 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.

Although the Director found the proposed endeavor has substantial merit, the Director also determined the evidence did not establish its national importance. Specifically, the Director found the submitted business plan and other evidence of record did not establish the endeavor would have broader implications, or national or global implications, within a particular field; significant potential to employ U.S. workers; substantial positive economic effects, particularly in an economically depressed area; broadly enhance societal welfare, or broadly enhance cultural or artistic enrichment.

On appeal, the Petitioner contests the Director's analysis of the record, contending the denial decision disregards both his submitted business plan and articles submitted in support of the petition. However, in the denial decision, the Director explicitly references the business plan submitted by the Petitioner in stating it "includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the [P]etitioner's education and work experience, and a description of company personnel." The Director further notes the business plan anticipates that in its fifth year, [redacted] will employ 23 individuals, pay

staff nearly four million dollars in total, and produce revenue exceeding 800 thousand dollars. However, the Director finds the Petitioner has not presented sufficient information or evidence of substantial positive economic effects attributable to the proposed endeavor. On appeal, the Petitioner asserts its business plan numbers are merely projections. We concur with the Director that the record does not contain supporting evidence corroborating these projected employment and financial figures, as indicated in the business plan, or establish the significant of the data to show the endeavor would provide substantial economic benefits to the region or national economy more broadly at the requisite level.

On appeal, the Petitioner asserts the Director did not acknowledge the link between his submitted articles and his proposed endeavor. However, the Director also explicitly references the articles submitted by the Petitioner and determined they address only the broader field rather than the Petitioner's specific endeavor. We see no error in the Director's determination. The Petitioner contends on appeal that IT is a key tool for enhancing the national security of the nation and asserts his endeavor touches on both the list of critical and emerging technologies from the White House and USCIS-recognized STEM fields. Namely, the Petitioner references advanced computing architectures, cloud computing, and cybersecurity. We acknowledge many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities by themselves generally are not indicative of an impact in the field of STEM education more broadly and would generally not establish their national importance. *Id.* Here, the Petitioner has not shown his endeavor to improve IT consultants' knowledge through courses, seminars, and workshops would advance STEM technologies and research or have broader implications rather than providing professional services within a STEM profession.

The Petitioner also asserts his proposed endeavor is nationally important as it will assist in disseminating knowledge to the IT community and help solidify digitization and information technology techniques. In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of national importance because they would not impact his field more broadly. *Id.* at 893. Here, the Petitioner has not established his proposed endeavor would sufficiently extend beyond the individual clients and companies he works with to impact the field of IT more broadly, at a level commensurate with national importance. In addition, the Petitioner has explained neither how his endeavor would solidify digitization and information techniques nor what the resulting impact would be on the field.

The Petitioner asserts the IT community brings wealth and jobs to the local and state economies while supporting other U.S. industries that help this country stay competitive globally. However, as discussed above, the Petitioner has not established his proffered data sufficiently demonstrates his proposed endeavor would provide substantial economic benefits to the region or national economy. And while we acknowledge the economic benefits of the IT industry at large and the invaluable support this industry provides for other industries in the economy, in evaluating national importance, the relevant query is not the importance of the industry or profession the individual will work, but on the specific endeavor the petitioner proposes to undertake. *Id.* at 889. While any economic activity has

the potential to positively impact the economy, the Petitioner has not demonstrated how the potential economic activity of his specific endeavor stands to create substantial positive economic effects to the requisite level.

B. Additional *Dhanasar* Prongs

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach and reserve the Petitioner's arguments relating to the Director's adverse determinations of her eligibility under the additional prongs of the *Dhanasar* framework. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.