U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33942095

Date: OCT. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a data analyst, 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 the proposed endeavor was of national importance. 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. *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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance

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 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." *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. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the potential prospective impact of his work. 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. 26 I&N Dec. at 893.

At the time of the filing, the Petitioner was working as a pricing analyst (pricing manager) at [redacted] He did not clearly describe his proposed endeavor in his initial filing. In his initial brief, he stated that for his proposed endeavor he "plan[ned] to continue making a meaningful impact as a Pricing Analyst at [redacted] as well as research "concentrated in the domains of Data Science, Predictive Analytics, and Machine Learning…into critical areas, including the enhancement of Credit Card Fraud Detection, the prediction of fatalities caused by Ambient Ozone Pollution, the analysis

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

and forecasting of COVID-19 trends, and the comparative evaluation of Stock Price Prediction Models." He did not provide adequate details on this proposed research endeavor.

In response to the request for evidence (RFE), the Petitioner stated that his "intended occupation is a Predictive and Data Analyst AND NOT a Pricing Analyst." The initial petition plainly stated the intent to "continue" in his current role and argued how it fit with the parameters of the national interest waiver. The RFE response, further elaborated that his current role was just one of the areas he leveraged his skills. A petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In his RFE response, the Petitioner asserted that his "proposed endeavor encompass[es] a diverse range of research initiatives...specifically focus[ed] on areas such as fraud detection (Cybersecurity), Healthcare analytics, data-driven cyber defense for military operations, data-driven interventions for addressing the opioid epidemic, data-driven Intervention for National Security, retail sales forecasting, Environmental Sustainability, and Financial Analytics for Economic Growth." The Petitioner has not explained logistically how he would act in these various and wide-ranging capacities at the same time, nor provided sufficient details as to how he will undertake these multitude of research studies generally. Anyone seeking this waiver must identify "the specific endeavor" that they propose to undertake. *Dhanasar*, 26 I&N Dec. at 889; *see generally* 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policymanual ("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.").

Additionally, we observe that in the RFE response, the Petitioner states his intention to establish a "consultation firm." A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The inclusion of consulting is a distinct addition from the initial proposed endeavor as it significantly expands the endeavor outside the original focus. As the *Dhanasar* framework requires an analysis of the substantial merit and national importance of the specific endeavor proposed by an individual, such an addition is material to his eligibility for a national interest waiver. Also, a petitioner must demonstrate eligibility requirements for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's proposal to also establish a consulting company, submitted for the first time in his RFE response brief, cannot establish eligibility as it was not presented in the original petition. Accordingly, we will only consider the proposed endeavor as described in the initial filing when conducting our analysis under the *Dhanasar* framework.

Overall, the Petitioner has not adequately established how his position as a predictive and data analyst will have a broader impact on the field, a significant potential to employ U.S. workers, or substantial positive economic effects, as contemplated by the first *Dhanasar* prong. 26 I&N Dec. at 889. In regard to the Petitioner's current role at [redacted], he has not demonstrated how that position would impact his field beyond his employer on the level of national importance. In this position he employs various types of data to help determine company pricing. Naturally, this helps the company as it allows them to pick optimal pricing. Nevertheless, the evidence does not sufficiently demonstrate how the Petitioner's employment with them would affect the data science field more broadly beyond [redacted] significantly employ U.S. workers, or have substantial positive economic effects as

contemplated by the first *Dhanasar* prong. See *Dhanasar*, 26 I&N Dec. at 889. As it concerns his research plans, while we recognize that research in the various fields mentioned by the Petitioner may result in broader implications, the Petitioner has not consistently and clearly explained his plans, such that he has not met his burden to establish his proposal is of national importance.

Furthermore, the record does not contain sufficient supporting evidence about the various planned projects. [2] The record includes his research plan, articles and reports, recommendation letters, his research papers, information on his current employment, training certifications, and evidence of association memberships.[3]

The research plan that the Petitioner presented consists of two-page summaries for each of his proposed topics of research. They contain descriptions of the research objectives, data collection methods, outcomes, implications and other issues. These descriptions consist of short, vague bullet points under each topic that do not provide sufficient details to impart a comprehensive plan of study. The Petitioner claims that his research will "have the potential to make significant contributions to advancing national interests." Yet such nebulous plans for research that the Petitioner claims he intends to undertake in the future does not sufficiently describe a specific proposed endeavor to allow for analysis and assessment under the three-prong *Dhanasar* framework and generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 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).

The articles and reports are also of little evidentiary value as they do not address the Petitioner's specific proposed endeavor or how it would have broad implications in the Petitioner's field in a way that implicates national importance. The letters of recommendation mainly address the Petitioner's skills or past work. We observe that some of the letters of recommendation discuss the impact of the Petitioner's research papers. For example, in the letter from Dr. [redacted] he complements the Petitioner's past papers and noted that the Petitioner's pursuits address national interests. Nevertheless, he does not address the Petitioner's proposed endeavor or the potential national importance of those research proposals.

Much of the remaining evidence in the record concerns the Petitioner's past accomplishments, such as evidence of the Petitioner's training certifications, association memberships, and past research papers. The Petitioner does not explain how this evidence is relevant to national importance as it points to the Petitioner's past accomplishments and experiences, not the specific endeavor's potential impact in the data analytics field. Generally, this type of evidence is more appropriate for the second prong when determining if the petitioner is well-positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890.

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[2] While we may not discuss every document submitted, we have reviewed and considered each one. We note that in response to the RFE, the Petitioner submitted evidence that originated after the filing of the petition. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(l), (12).

[3] The copies of the Petitioner's journal publications only include the first pages of the papers. Additionally, some of the news articles and reports also did not include all their relevant pages. We have reviewed the evidence based on the pages included in the submission.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that the Petitioner's proposed endeavor will sufficiently extend to affect the region or nation more broadly. 26 I&N Dec. at 893. He has also not shown 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.

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.