U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34424494

Date: OCT. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an individual who works in the field of information technology, or IT, seeks employment-based second preference (EB-2) immigrant 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 the record did not establish that the Petitioner merited a national interest waiver, as a matter of discretion. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id.* 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 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as an advanced degree professional. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner initially described his proposed endeavor as a business venture offering consulting services related to Hyperconvergence infrastructure (HCI) systems, which he states are necessary in the modernization of data centers as the demand for cloud-computing platforms increases. He describes HCI as "an IT framework that combines storage, computing, and networking into a single system that can reduce data center complexity and increase scalability." The business plan provides the following statement to summarize his proposed endeavor:

> [The company] helps clients to plan and deploy their server infrastructure, storage, data protection, and operating systems, applying IT governance and best market practices. Offering a highly specialized consultancy service, [the company] will support U.S. companies to be very successful in a new business environment of Hyperconvergence technology and Virtualization. Attending [to small-] and mid-size enterprises (SMEs) and Corporations, the company offers high-value, high-impact professional services that transform the way the clients do business. The company's approach to complete solutions helps facilitate the journey of organizations by empowering the clients to achieve their goals more effectively. [The company] manages the client company's IT implementation from beginning to end, offering full IT consulting services, outsourcing services, training, and assessment.

The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, he did not demonstrate that his proposed endeavor would have national importance. On appeal, the Petitioner asserts that the Director's decision did not consider all of the evidence of record. For the reasons described below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

[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 to be discretionary in nature).

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. *Dhanasar*, 26 I&N Dec. at 889.

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.* 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the Petitioner's work. *Id.* at 889.

The Petitioner initially asserted—and asserts again on appeal—that certain documentation in the record establishes the national importance of his endeavor. That documentation describes government initiatives concerning the fields of science, technology, engineering, and mathematics (STEM), immigrant entrepreneurs and the U.S. economy, small businesses, the impacts of the recent global pandemic, process automation, and electronic waste products (e-waste). This material, however, does not provide sufficient insight into the Petitioner's plans to provide IT services through a company that, according to a statement initially included in the record, "has the power to broker global cultural and technological barriers"—an assertion that relies on material in the record discussing the ramifications of the pandemic and the issue of remote work, rather than the Petitioner's proposed company and its consultancy services. The Petitioner similarly relies on material discussing e-waste and how server virtualization reduces the number of physical servers to assert that his consulting company will contribute to environmental preservation; he has not explained, however, how his company's provision of guidance to individual small- and medium-sized businesses on how they should address their IT usage and storage needs would have an environmental impact on a national scale. While the provided documentation relates to the area in which the Petitioner intends to develop his business, it does not speak to how the Petitioner's individual endeavor to run an IT services company would have a potential prospective impact of national importance.

Regarding his specific endeavor, the Petitioner's business plan states that his company will provide consultation services to help clients determine whether their organizations should utilize HCI, a traditional system, or a hybrid solution to meet their IT usage and storage needs—the demand for which he states will increase nationwide in numerous sectors. Concerning *Dhanasar*, in response to a request for evidence, the Petitioner emphasized that the national interest "is not only served by foreign nationals that are more likely to solve problems on a national scale, but also by foreign nationals that aim to solve certain problems nationwide" by introducing "successful ideas and methods" and "improvements and innovations"; however, neither the business plan nor other documentation in the record describes an innovative idea or approach that the Petitioner's company would offer to businesses seeking IT storage solutions. The Petitioner has not explained how his company would address any national issues related to cloud computing beyond operating as one of

many IT consultancy companies providing consulting services to business clients. We note that the Petitioner provided an expert opinion letter concerning his proposed endeavor promoting its national importance; that letter, however, reiterates information in the business plan and speaks generally of "high-value, high-impact professional services that transform the way clients do business" without specifying how the Petitioner's company would have an impact nationally. We also note that the Petitioner provided letters of support describing his skills[2] and successful completion of projects during his work as an IT professional; however, these letters do not discuss the Petitioner's proposed endeavor or provide information to demonstrate that it will have an impact on a national scale.

Concerning projections specific to the Petitioner's company, his business plan estimates that, by its fifth year of operation, he will directly employ 38 workers, paying $524,453 in payroll taxes and generating a net income of $989,544. However, the Petitioner has not demonstrated that his proposed endeavor would serve to impact the industry or field more broadly, rising to the level of national importance. For instance, it is not clear how the Petitioner's operation of one company in a field that is expected to increase in value—according to statistics provided in the record—to $32.19 billion by 2028 would have a positive economic impact at the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890. Further, the projections in the business plan are not supported by objective evidence to demonstrate how his company would have a prospective national impact on the field or on an economy of any scale. The Petitioner's claims do not provide an objective basis for his projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is likely the company would have a positive national economic impact or a national prospective impact within the field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor based on its potential job creation or impact on the U.S. economy.

We note that the projections in the Petitioner's business plan were based on data from a Regional Input-Output Modeling Systems (RIMS II) analysis, which used calculations based on the industry category of "custom computer programming services" in Texas. The Petitioner, however, has not sufficiently demonstrated that this broad category properly captures the potential impact of his particular business endeavor; he has therefore not shown that these general statistics on a broad category of economic activities substantiate the national importance of his proposed endeavor. Moreover, the RIMS II modeling tool relies on various assumptions, leaving the prospective impact of his proposed company uncertain. The Petitioner has not provided sufficient evidence to show that he would employ a significant population of workers in a particular region, nor has he shown that his proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue.

The business plan also emphasizes that the Petitioner's proposed endeavor would address an "IT talent shortage" and youth unemployment in the United States. However, we observe that fluctuating opportunities within the general labor market do not demonstrate that his endeavor stands to have an impact on any of the numerous industries served by IT service providers or otherwise have implications rising to the level of national importance. It is not clear how a business of the size and

[2] We note that evidence relating to a petitioner's training, skills, and experience typically applies to the second prong of *Dhanasar*, which concerns whether an individual is well-positioned to advance a proposed endeavor.

scope described in the business plan would address any purported IT workforce shortages or increase youth employment in a manner that would constitute an impact on a national level.

In addition to IT consulting services, the Petitioner stated that his business would "offer a range of IT courses" and "deliver authorized and industry-leading content through multiple delivery formats—classroom, virtual classroom, and on-demand," emphasizing that this part of his endeavor aligns with federal initiatives concerning STEM fields. We note, however, that while USCIS Policy Manual guidance provides that proposed teaching activities in STEM fields "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 therefore generally would not establish their national importance."[3] Here, the Petitioner has not explained how his proposed endeavor would have a broader impact in the field of STEM education or training. Further, 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. The Petitioner's intention to transmit his knowledge to his employees is not considered an activity that would have a broad impact on the economy.

The Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. Specifically, he has not shown that his business stands to provide substantial economic benefits to any particular locality or to the United States overall. As such, the business plan does not demonstrate that the prospective benefits to the 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 record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because 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

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.

[3] 6 USCIS Policy Manual F.5(D)(2).