U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30174723

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 an intention to expand his current software development company into the United States. He described software he created and would further develop that would gather certain data to contribute to workplace safety—software designed, as he stated, to "help/dissuade/minimize occupational accidents" at small- and medium-sized companies. In response to a request for evidence, the Petitioner provided the following statement to summarize his proposed endeavor:

> As the majority shareholder of [my company] (US subsidiary), my goal in having a permanent visa to live and work in the US is to make [the company] a leading custom software manufacturing business and start opening to international markets, strengthening trade relations in the US, with Latin America and Europe. Since I have led [the company] for almost a decade, I am confident that I can apply the necessary skills to grow a business contributing to the U.S. technological and economic competitiveness.

The Petitioner also provided the following concerning his endeavor:

> My endeavor includes the completion of the…product I have been developing. This product will benefit all companies concerned about their employees' well-being, especially related to workplace safety and health. Although it was initially created for companies in the Oil & Gas sector, [the product] can be applied to all types of companies. [The product] is designed to prevent accidents related to oil fields. Still, it can be used in offices for accident prevention on stairs [and] to determine the proper positions for sitting and deadlifting.

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

[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).

asserts that the Director's decision did not contemplate or discuss 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.

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 related to the field of information technology (IT) establishes the national importance of his endeavor. That documentation describes government initiatives to encourage the growth of small- and medium-sized businesses in the United States and to modernize the use of IT in government; the importance of talent in the fields of science, technology, engineering, and mathematics (STEM) to the U.S. economy and societal well-being; and Occupational Safety and Health Administration business practice recommendations. This material, however, does not provide sufficient insight into the Petitioner's plans to provide IT services through a company that, according to his business plan, "will help organizations achieve operational efficiency with the latest digital transformation tools." 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.

The Petitioner's business plan states that "automation of operations is one of the highest priorities" of American companies and asserts that his company "will seek to create strategic alliances with universities to develop research projects in the fields of medicine, robotics, agrotechnology, occupational safety and health that will improve people's quality of life . . . ." However, the business plan does not identify any specific intentions that his company has concerning particular research projects or his company's role in such projects, nor does it explain how his company would partner with other entities to achieve a national impact on a specific industry or field. We also note that, although the business plan describes his work safety software product, it does not explain how it compares to current workplace safety technologies or other safety measures or how it would be deployed in a manner that would have an impact of national importance.

Concerning projections specific to the Petitioner's company, his business plan estimates that, by its fifth year of operation, he will employ at least 20 workers, paying $212,497 in payroll taxes and generating $2,048,000 in sales. 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 was expected to increase its revenue—according to statistics provided in the record—to $44.8 billion in 2022 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. 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. 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.

The business plan also emphasizes that the Petitioner's proposed endeavor would address IT and STEM workforce shortages in the United States, highlighting that the employment of software developers is projected to grow by 22% from 2020 to 2030, "much faster than the average for all occupations." 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 other STEM professionals, or otherwise have implications rising to the level of national importance. It is not clear how a business of the size and scope described in the business plan would address any purported workforce shortages in the IT or STEM fields that would constitute an impact on a national level.

The business plan also asserts the importance of the Petitioner's intentions concerning "knowledge transfer" through his provision of training and guidance to his company's potential personnel and interns. 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."[2] 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 his field.

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

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

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.