U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33398637

Date: SEP. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, 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 national interest. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.[1]

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. Our precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions.

[1] In a prior appellate decision on this petition, we remanded the matter for the issuance of a new decision by the Director of the Texas Service Center. Our order advised that "[t]he matter [wa]s remanded for entry of a new decision, which – if adverse to the Petitioner – shall be certified to us for review." *See* 8 C.F.R. § 103.4(a)(1), (4). In issuing their new decision, the Director of the Texas Service Center instead advised the Petitioner of his appeal rights, with which he timely complied.

Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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 Petitioner intends to come to the United States "to act and offer his services as [a] Computer and Information Systems Manager[ ]. . . with a focus on the following areas of business: Accounting; Financial; Purchases' Inventory; Costs; Revenues; Budget; Tax and Tax, Patrimony, Contracts: Human Resources." To that end, his "primary intention [is] opening a Computer and Information Systems Manager business in Florida, generating jobs, conquering his space in the United States of America and multiplying his knowledge." He specifically intends to work in the market segments of "English schools, pet shop and financial and insurance institutions".

To qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. As a threshold matter, the Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. Upon de novo review, we disagree and withdraw the Director's determination regarding the Petitioner's eligibility for EB-2 classification. The record does not clearly establish the Petitioner has both a qualifying degree and at least five years of progressive work experience in the field of his proposed endeavor. However, as discussed below, the Petitioner has not overcome the Director's determination that the record did not establish a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Therefore, we need not further address whether he is eligible for the EB-2 classification as an advanced degree professional or individual of exceptional ability. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve this issue. *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).

The Director further concluded the record did not establish the Petitioner's proposed endeavor would have broad enough impact sufficient to rise to the level of national importance as required to establish eligibility for a national interest waiver under the *Dhanasar* framework. On appeal, the Petitioner argues he is providing a detailed breakdown of his plans such that USCIS should conclude his consultancy work will be of national importance. For the reasons set forth below, we conclude that

[2] *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).

the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.[3]

Any basic economic activity has the potential to positively impact a local economy; however, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. An endeavor may have national importance if it "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area . . .." *Id.* at 890. The Petitioner asserts on appeal that his business will generate jobs for U.S. workers and positively contribute to the U.S. economy. He claims that "the creation of direct and indirect jobs is a vital aspect of [his] business." In his business plan and on appeal, the Petitioner indicated his proposed technology solutions consulting firm would have the potential to generate five direct jobs by the end of the fifth year in business, including the employment of the Petitioner himself. He also claims his business would "directly contribute $1,232,200.00 in paid wages in the first 5 cumulative years" of operation. However, the business plan does not provide sufficient explanation for the basis of these projections. Further, even if sufficient basis were provided for the proposed endeavor's revenue and job creation projections, these figures do not establish that the Petitioner's company would operate on a scale rising to the level of national importance. The Petitioner has not explained how his proposed employment metrics would have impact beyond his business's area of intended operations. Upon de novo review, we find that the Petitioner did not establish his proposed endeavor would have substantial positive economic effects.

Despite establishing his venture has the potential to provide valuable services to his clients, the Petitioner did not establish the specific proposed endeavor will have substantial national implications or have a broader impact beyond the individual clients served by his company. On appeal, the Petitioner contends he has established that his proposed endeavor will have a significant impact on the local and national economy through "its supply chain, job creation, tax contributions, knowledge transmission, and consideration of social and environmental impacts". In support of these claims, the Petitioner cites data about the importance and impact of consultancy firms generally, and he argues his consultancy firm will similarly result in positive contributions to society on local and national levels. When determining the national importance of a proposed endeavor, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; rather, we focus on "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.* The evidence submitted by the Petitioner does not establish his proposed endeavor would operate on such a large scale to have a national impact on any of his claimed industries. While we acknowledge the importance of the fields of business and information technology, the Petitioner did not establish his proposed endeavor would have broader implications to the overall fields to establish its national importance. *See id.* at 893.

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

[3] If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs.

Petitioner has not demonstrated eligibility for a national interest waiver. As the 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 "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 that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.