U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33960239

Date: SEP. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner—who describes himself as a "an Enterprise Architecture and Data Warehousing expert"—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 qualified for a national interest waiver. 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 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.

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 a member of the professions holding an advanced degree. The remaining issue to be determined on appeal 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.

The Petitioner initially stated that he intended to operate a company providing cybersecurity consultancy services. He provided the following summary of his proposed endeavor:

> I will spearhead the development of blockchain-based anti-fraud solutions, employing cutting-edge techniques such as advanced identify verification, smart contracts, encryption methods, amongst others, to mitigate the prevalence of fraudulent activities that currently plague the financial industry. This approach will promote security, transparency and efficiency in major industries including healthcare services, education, small businesses, and fintech which play a crucial role in the national life and socioeconomic wellbeing of the nation. By focusing on leveraging emerging technologies such as artificial intelligence (AI), machine learning, and robust cyber-security measures, my endeavor holds significant value and national importance, as it essentially applies a tool important for the success of business and national security operations—Information Technology (IT).

Although the Director determined that the Petitioner's proposed endeavor has substantial merit, the Director concluded the record did not establish that the endeavor is of national importance. On appeal, the Petitioner reiterates arguments for the national importance of his endeavor and cites documentation previously included in the record, asserting that the Director did not review all of the submitted evidence. Upon review, for the reasons discussed 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

[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).

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 his work. *Id.* at 889.

The Petitioner provided documentation from public and private entities discussing issues concerning technology and cybersecurity in the financial services industry. This material, however, does not provide sufficient insight into the Petitioner's plans to work as a provider of cybersecurity services. While this 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 a consultancy company would have a potential prospective impact of national importance.

The Petitioner also submitted letters of recommendation discussing his work in several positions in which he deployed his skills to achieve the goals of his employers and the goals of those to whom he provided consultation. These letters express confidence in the Petitioner's abilities, citing his intelligence, dedication, competence, motivation, and passion. Although these letters discuss the Petitioner's previous job performance, they do not provide any information concerning his proposed endeavor. We note that evidence of the Petitioner's job experience and performance generally relates not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second,[2] which evaluates whether a petitioner is well positioned to advance an endeavor. As such, the letters do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

Regarding the Petitioner's descriptions of his proposed endeavor, the Petitioner's statements within the record discuss the importance of cybersecurity in terms that are wide-ranging and seemingly applicable to any institution, organization, small business, or individual with a stake in securely moving or retaining financial assets. The Petitioner has not specifically described how he would undertake an endeavor of a scale that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. While the Petitioner has described in broad terms the services he intends to provide, he has not explained how his individual company would have a national-level impact to "mitigate the prevalence of fraudulent activities that currently plague the financial industry."

[2] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

In addition, the Petitioner's statements generally speculate that the creation of his company would create jobs in the United States, but he did not provide independent evidence or otherwise explain how his company would create jobs at a level that would have a significant impact on a given region or have a prospective national impact on a specific field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The record does not include a plan or other indication of how the Petitioner would operate a company that would, as he claims, impact either public institutions, private businesses, or the economy at the level of national importance contemplated under the first prong of the *Dhanasar* framework. Further, the record does not demonstrate that the Petitioner's proposed endeavor has the significant potential to broadly enhance societal welfare or to contribute to the advancement of a valuable technology.[3]

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 demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.

[3] 6 USCIS Policy Manual F.5(D)(1).