U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29848422

Date: FEB. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of computer systems consulting, seeks 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 that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established 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. 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. Next, a petitioner must then demonstrate 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 that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a definitive statement submitted with the petition, the Petitioner stated that he intends to work as an entrepreneur in the field of computer systems consulting by developing and expanding his company, [redacted], a registered limited liability company in the State of Florida. Through his company, the Petitioner asserts that he will provide IT consulting services for small- and medium-sized businesses in the United States.

He further stated:

> I will pursue this endeavor by leveraging my years of IT business experience, where I have worked for several international organizations and businesses. Particularly, I have spearheaded projects involving system analysis and development, software development implementation, application performance monitoring, and cloud environments. In this capacity, I will generate jobs for U.S. workers as well as create continuous, significant, and profitable opportunities for the national economy.
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> [The company] will operate as a consulting company providing services to small- and medium-sized enterprises in the field of software engineering, digital transformation, cloud migration, and application performance monitoring. The company aims to support American companies in adopting innovative technologies to become more agile, flexible, and well prepared to combat the challenges brought to light by the COVID-19 pandemic. Through its services, it also intends to help businesses better adapt to the new "normal" which has transformed the way we work and conduct business.
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> The business will be headquartered in Florida, and is set to serve HUBZone areas, which are a part of a United States Business Administration program encouraging small companies to operate and employ people in historically underutilized business zones.

> The objective is to generate jobs for U.S. workers while offering businesses opportunities to build and expand their professional capacities in these underserved areas. This will improve wages and working conditions for American citizens, and boost investment and economic development throughout such local communities.

The initial filing also included copies of the Petitioner's academic credentials, a copy of his company's business plan, copies of service contracts, an expert opinion letter, letters of recommendation, and industry articles and reports in support of his eligibility.

The Director issued a request for evidence (RFE), noting that while the Petitioner's evidence was sufficient to establish that his proposed endeavor has substantial merit and that he is well positioned to advance his proposed endeavor, the record as initially constituted was insufficient to demonstrate that the proposed endeavor had national importance. The Director determined that the Petitioner had not demonstrated that the proposed endeavor would impact the regional or national population at a level consistent with national importance. The Director further noted that the Petitioner had not demonstrated that his proposed endeavor would extend beyond his "niche" target of small- and medium-sized businesses to impact the industry or field more broadly. As a result, the Director requested a detailed description of the Petitioner's proposed endeavor in order to evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner's counsel submitted a letter claiming that the Petitioner's proposed endeavor "is national in scope, and will have broader implications within his field, due to the ripple effects of his professional activities." Counsel further emphasized the potential of the proposed endeavor, noting that "by organizing, devising, and implementing IT management systems, [the Petitioner] will not only contribute to his respective clients' commercial capacities, but he will actually ensure such enterprises' national economic contributions, and continuous workflow." Counsel concluded by asserting that the Petitioner's professional history and experience uniquely qualify him to advance his proposed endeavor.

The Petitioner resubmitted his business plan in response to the RFE, and also submitted additional articles and reports in support of his eligibility for a waiver of the job offer.

In denying the petition, the Director determined that although the Petitioner's proposed endeavor has substantial merit, the record did not establish that the endeavor is of national importance. Specifically, the Director noted that the Petitioner did not establish that his proposed endeavor had implications beyond his self-owned company at a level sufficient to demonstrate national importance. The Director further determined that the Petitioner did not establish that his proposed endeavor would have a broader impact on the IT field, specifically noting that "benefits that are isolated to a single institution or locality in the United States might be so attenuated at the national level as to preclude a finding that the proposed endeavor has national importance."

On appeal, counsel for the Petitioner asserts that USCIS "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to the detriment of the Appellant." The Petitioner also asserts, through counsel, that the Director disregarded the evidence submitted, and provides a brief that emphasizes his qualifications as an entrepreneur in the IT industry and asserts that the evidence of record establishes the national importance of the proposed endeavor.

For the reasons provided below, we agree with the Director that the Petitioner has not demonstrated the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

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. 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. 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 contends that the Director did not duly consider certain pieces of evidence, such as his resume and experience, his company's business plan, his work in the field, letters of recommendation, and industry articles and reports, and relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.[2]

The record includes evidence to support the Petitioner's assertion that he has experience in the IT industry. Letters of support from former colleagues and business associates speak to his talents and accomplishments on various IT projects undertaken by him in Brazil. We note that the Petitioner's experience, however, is not relevant to the first part of the *Dhanasar* framework, but to the second - whether the Petitioner is well positioned to advance the proposed endeavor. Neither the letters nor any other evidence within the record provide insight into how the Petitioner's endeavor to establish an IT consulting company in Florida will positively impact the region or the industry beyond any clients to which his singular business will provide IT consultancy services.

The record contains an expert opinion letter from a professor of computer science, information systems, and cyber security at [redacted] who concludes that the Petitioner's proposed work has national importance. But the professor does not base his conclusion on the national

[2] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

importance of the Petitioner's specific endeavor. Although he recites the Petitioner's career history and accomplishments, and concludes that "he is exceptionally qualified to hold a position in this field within the United States," his findings stem from the significance of the IT field generally, and particularly note the importance of e-commerce, cyber security, and infrastructures in many aspects of business, military, and civilian activity. Under *Dhanasar*, however, the Petitioner must establish the national importance of his specific proposed endeavor, which is narrower than the overall area, field, or industry in which the Petitioner seeks employment. The letter did not mention the Petitioner's proposed endeavor, which is to establish and develop his own IT consulting company to assist small- and medium-sized businesses in Florida. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable").

The record also contains articles and industry reports discussing immigration, entrepreneurship, the IT industry, and the shortage of IT professionals. While the Petitioner previously asserted and now reiterates on appeal the significance of this material in establishing the national importance of his endeavor, we examine the endeavor itself to evaluate its broader impact. These materials do not specifically describe the Petitioner's proposed endeavor or its potential impact. Rather, these materials amount to background information about general subjects. Regarding the articles about the shortage of IT professionals in the United States, a national shortage of IT professionals is not, in and of itself, sufficient to establish the national importance of the Petitioner's endeavor. Further, the Department of Labor directly addresses U.S. worker shortages through the labor certification process.

We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the beneficial implications and national importance of the Petitioner's proposed endeavor as an entrepreneur in the computer systems industry are largely reported by institutions of distinguished reputation and major media. On appeal, counsel emphasizes the Petitioner's experience in the field and asserts that his proposed endeavor "aligns with the national interest by promoting technological development, economic growth, and job creation." Assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

The Petitioner's business plan emphasizes that his company will help its clients "increase their operational efficiency" by "bring[ing] their businesses into the digital age through the development of digital products and customized software," and will thus have a positive impact on the operations of numerous businesses. The business plan further projects that after its fifth year of operations, it will have estimated revenues of approximately $8.6 million, with 35 employees and payroll expenses totaling approximately $4 million. General assertions about his company's potential impact are not supported in the record by corroborating evidence of the plausibility of those assertions, and a lack of detail concerning his proposal makes it difficult to discern how the Petitioner's endeavor differs from that of other entrepreneurs in the field who operate IT consulting firms in the United States. Moreover, while the Petitioner claimed that his business will serve "HUBZone" areas in Florida, he did not provide documentary evidence regarding Hubzones, or explain why his business location in a historically underutilized business area would be of national importance. Further, the Petitioner does

not explain how the potential addition of 35 jobs over the first five years of operations would be of significance in the area in alleviating any economic distress or addressing commercial underutilization.

The Petitioner has not shown how his own business will impact the economy or the industry at a level commensurate with national importance. Moreover, as noted by the Director, the growth, revenue, and hiring projections provided in the business plan are not accompanied by an explanation of the sources used for those calculations. The Petitioner's unsupported statements are insufficient to meet his burden of proof. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The evidence of record does not demonstrate that the endeavor realistically has significant potential to employ U.S. workers or otherwise offer substantial positive economic benefits for the United States. Consequently, the record does not establish the national importance of the 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. Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's 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 conclude 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.