U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24844876

Date: MAR. 30, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software engineer, 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 Nebraska Service Center denied the petition, concluding that although the Petitioner qualified as an advanced degree professional, 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:

- The proposed endeavor has both substantial merit and national importance;

[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 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.

The Petitioner initially provided a statement indicating:

> I hereby state and confirm that I seek permanent residency in order to continue working in my area of expertise in the field of economic decision support systems and big data analytics as a scientist and consultant/contractor for enterprises in startups, as well as launching my own IT company. I intend to apply my knowledge and expertise to social-economic and environmental problems via scientific research and publishing results from one side and to increase the value of a business for enterprise and startups that can benefit from using cutting edge technologies in decision support systems and data processing.
>
> . . . .
>
> Additionally, I plan to continue my work toward building automated systems for well known and widely used cloud technology and platforms such as Microsoft, Amazon, IBM, and Google which will detect harmful malware and abusive applications as well as work on cloud security projects.

The Petitioner also submitted letters from former employers as well as an expert opinion letter in support of his eligibility for the underlying EB-2 classification.

The Director determined that the initial evidence was insufficient to demonstrate that that the Petitioner was eligible for a national interest waiver, and issued a request for evidence (RFE). In response, the Petitioner submitted a copy of the business plan for his company [redacted] as well as additional letters from former employers and an expert opinion letter from [redacted] Adjunct Professor of Cybersecurity and Information Technology at the University of [redacted]. With regard to the proposed endeavor, counsel for the Petitioner restated the claims set forth by the Petitioner in his personal statement, and emphasized that the Petitioner's endeavor, which included the development of cloud security measures, would help guard against security breaches, manage remote work, ensure

disaster recovery, comply with regulations, and eliminate weak links and build access levels in the business community.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, counsel for the Petitioner submits new evidence as well as a virtually verbatim copy of the RFE response, stating that the decision to deny the petition was in error and that the Petitioner is eligible for a national interest waiver.

Preliminarily, we note that the appeal is supported by documents pertaining to the Petitioner's company, [redacted] including contracts and letters of intent to invest in his company. Upon review, however, we note that these documents, as well as the Petitioner's previously submitted business plan for [redacted], reflect dates after the issuance of the Director's RFE.[2] The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Moreover, the *Izummi* decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner discussed the importance of developing cloud security practices for businesses, the Petitioner must demonstrate the national importance of his specific, proposed endeavor rather than the general importance of cloud security and data analytics technologies. In *Dhanasar*, we 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.

We acknowledge the Petitioner's submission of [redacted] letter in support of his eligibility for a national interest waiver. [redacted] recited the Petitioner's education and employment history, and provided a summary of the Petitioner's business plan. Based on this information, [redacted] concluded that the Petitioner was capable of advancing the proposed endeavor and that his work implementing cloud-based systems and solutions will be beneficial to American businesses and laboratories.

The letter, however, provides an overly vague recitation of the Petitioner's reputation and abilities, and does not provide a basis for [redacted] conclusory assertions regarding the national importance of the Petitioner's proposed endeavor. While he commented generally on the growth potential of

[2] The business plan submitted in response to the RFE was drafted in April 2021, nearly one year after the filing of the petition.

cloud security solutions and big data analytics, he did not support his conclusions regarding the national importance of the Petitioner's proposed endeavor, and repeats much of the information the Petitioner already provided in his résumé without adding sufficient independent analysis. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor and why it would have national importance.

In addition, while the Petitioner emphasized his 10 years of professional experience, the Petitioner's experience and abilities in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, 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. The Petitioner did not offer specific information and evidence to corroborate his assertions that the prospective impact of continuing his work as a software engineer in the field of economic decision support systems and big data analytics rises to the level of national importance. 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. Here, the record does not show through supporting documentation how the Petitioner's endeavor, either through [redacted] or as a consultant/contractor for other businesses, stands to sufficiently extend beyond his own company or other companies conducting business with the Petitioner, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not establish that his proposed endeavor of developing cloud security practices has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show any benefits to the U.S. regional or national economy resulting from being an independent business owner would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[3]

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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 demonstrated eligibility 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.