U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29137234

Date: FEB. 23, 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 information technology (IT), 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. 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 the record did not establish that the Petitioner qualifies for the 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. 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:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 record demonstrates that the Petitioner qualifies as a member of the professions holding the equivalent of an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). The remaining issue to be determined 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.

In his native Brazil, the Petitioner earned a bachelor's degree in business management in 2005, followed by graduate-level training in strategic management. Also in Brazil, the Petitioner worked in various IT capacities for an automobile manufacturer in 2008, and for a steel company from 2008 to 2016. Since 2017, the Petitioner has spent most of his time in the United States, initially in F-2 nonimmigrant status as the spouse of an F-1 nonimmigrant student. The Petitioner is president and chief technology officer of an IT services company that he established in Florida in 2017.

The Petitioner stated that his "proposed endeavor in the United States is to lead [his company, which] designs IT solutions for businesses that do not have the structure to develop and invest in (R&D) IT solutions in-house." A business plan in the record states that "[t]he Company is active and in operation," serving businesses in such fields as law, accounting, and real estate.

The Director determined that the Petitioner had established the substantial merit of the proposed endeavor, and that the Petitioner is well positioned to advance that endeavor. But the Director denied the petition based on the determination that the Petitioner had not established the proposed endeavor's national importance, and that the Petitioner had not shown that, on balance, a waiver of the job offer requirement would benefit the United States.

A. Substantial Merit and National Importance

The first *Dhanasar* 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An 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 889-890.

An introductory brief submitted with the petition includes a section with the heading "The National Importance of the Beneficiary's proposed field of endeavor," discussing various subjects relating to the IT industry. But the Petitioner must establish the national importance of his specific proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889. The importance of an entire field, such as IT, does not necessarily show the importance of one endeavor within that field. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the

occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See, generally,* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

The business plan for the Petitioner's company indicates that the Petitioner's company provides services in "equipment (hardware), systems and applications (software), as well as security, automation, and technical support for IT operations." The plan projects hiring eight employees between 2022 and 2027, but at the time the Petitioner filed the petition, the Petitioner was the company's only employee. The Petitioner did not show that the company had employed anyone else since its founding in 2017.

The business plan states that the Petitioner's proposed endeavor will have "National-level Impact" by "helping the longevity of [customers], as well as supporting their growth," and by "helping them increase productivity and sales, as well as improving their time-to-market." The business plan does not show how benefit to individual customers has broader implications that give national importance to the proposed endeavor.

The "National-level Impact" portion of the business plan identifies areas of concern such as "Operating in an Important Sector and Contributing to Foreign Direct Investment" and "Enhancing Clients' Security." The importance of these general subjects is not in dispute, but their overall significance does not establish the national importance of the Petitioner's proposed endeavor in particular. For example, security is important for every business, but it does not follow that one company has national importance because it provides security solutions to a small number of clients. The business plan does not quantify the proposed endeavor's expected impact in the identified areas of concern.

The Director issued a request for evidence (RFE), stating that the Petitioner had not shown that the proposed endeavor would have broader implications, either economically or from innovations that advance the field, that would "sufficiently extend beyond [the Petitioner's company] and its clients to impact the industry or field more broadly."

In response, the Petitioner asserted that his "tech tools and innovations can help business to grow, stay atop, and attract more investment," leading to broader impact. As an example, the Petitioner cited a project his company undertook for "a real estate group of companies," developing a new application (app) "focusing on streamlin[ing] real estate transactions, by accelerating compliance and facilitating the closing." The Petitioner stated: "The NEW APP is in its test phase and is fully implemented and in-use by [the client] and selected realtors and investors" in Florida and Brazil. An official of the client organization stated: "The APP has assisted [the company] in more than 31 transactions . . . totaling USD 31 million." The Petitioner did not establish the significance of these figures in the context of the U.S. real estate market. Also, he did not establish that his company's app significantly affected the outcome of the individual transactions, or that the transactions would not have occurred without the app. The available evidence indicates that the app was in very limited use when the Petitioner responded to the RFE.

The Petitioner asserted: "Innovations that [the Petitioner] creates through his IT projects are vital to introduce novelty to existing product lines or processes. It can be used to design a new technique or upgrade an existing business process and operating system." These appear to be generic assertions

about the IT field, and do not establish the impact of the Petitioner's work beyond benefit to his clients. Underscoring this point, the Petitioner cited letters from four customers, each attesting to the quality of the service that the Petitioner's company has provided to them. The letters show that the Petitioner's company has met its clients' needs, but they do not establish that the company has had a significant impact beyond the four customers in and around [redacted] Florida who submitted letters on the Petitioner's behalf. Furthermore, the letters describe apps that the Petitioner custom-designed for each customer. This ensures that the app closely matches a particular customer's needs, but it also limits the use of the app to that customer.

In the RFE, the Director noted the Petitioner's plan to hire eight employees over five years, and stated: "USCIS cannot conclude that the petitioner's specific proposed endeavor . . . has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation as contemplated by *Dhanasar*." In response, the Petitioner asserted that "*Matter of Dhanasar* never established how many employees are enough to show national interest." But *Dhanasar* also did not establish that every employment-creating endeavor, regardless of size, has national importance. Different endeavors will impact the national interest in different ways, and the burden is on the Petitioner to establish that the creation of eight jobs over five years has broader economic implications. The Petitioner has not done so here.

The Petitioner observed that "the Job Creation Requirement for EB-5 Investor Green Car[d]s is (10) ten full-time jobs," under section 203(b)(5) of the Act. The EB-5 program is a different category based on different regulations, with requirements beyond job creation. Even if it were comparable, which it is not, the Petitioner has not established that his proposed endeavor would directly create ten full-time jobs. The business plan shows seven full-time jobs and one part-time job.

The Petitioner also submitted a separate statement, emphasizing his experience and expertise. These factors weigh on the second *Dhanasar* prong, regarding whether the Petitioner is well positioned to advance the proposed endeavor, which the Director already granted. They do not inherently give national importance to that endeavor.

The Director denied the petition, stating that the Petitioner had not established that the proposed endeavor "will potentially impact the field of Information Technology at a national level," or that "the particular work he proposes to undertake offers original innovations that contribute to the advancements in his field of endeavor, or otherwise has broader implications in his field." The Director considered the Petitioner's claims of economic impact, but did not find them persuasive.

On appeal, the Petitioner submits an "updated business plan," relying on new figures, such as the claim that the company will hire 13, rather than 8, new employees during the next five years. The Petitioner did not submit this information either with the initial filing of the petition or in response to the RFE. The Petitioner's revision of the figures in his business plan at this late date does not establish errors of fact or law in the Director's decision as required by 8 C.F.R. § 103.3(a)(1)(v), because the Petitioner did not make this information available for the Director's consideration prior to the denial.

The appeal includes more information about projects that the Petitioner's company undertook for its clients, but the Director did not dispute that the Petitioner's proposed endeavor would benefit the

company's customers. Rather, a key basis for the denial is that the Petitioner had not established that the proposed endeavor would produce significant benefit *beyond* those individual clients.

The Petitioner provides estimated figures about the proposed endeavor's potential future performance, such as projected revenues and taxes, but does not establish that the figures amount to the *substantial* positive economic effects contemplated in *Dhanasar*. With respect to the Petitioner's reliance on financial estimates, it is significant that the Petitioner is not describing a new or hypothetical endeavor. Rather, the proposed endeavor is the continued operation of a company that had existed for five years before the Petitioner filed the petition in 2022. When discussing the company's past activity, the Petitioner has discussed projects for four customers, but submitted little information and evidence about the company's overall performance during those first five years. The Petitioner was apparently the company's only employee during that time; the business plan submitted with the petition does not show any other existing employees. The Petitioner's arguments hinge, to a large extent, on projections about the company's future performance. However, the lack of evidence about the company's *past* performance diminishes the weight we give to those estimates, as do the Petitioner's changes to those projections and estimates.

The Petitioner states:

> [T]he company will also work in the educational sector, by promoting academic development and professional improvement for professors at American universities through agreements and offering internships. By improving on established guidelines for IT Solutions in academia, [the Petitioner] will help bridge a gap between college students' academic limitations and transitioning them to a more practical work environment upon graduation.

This vague and general assertion is entirely new on appeal. The Petitioner does not elaborate as to "the established guidelines for IT Solutions in academia" or how his proposed endeavor would improve upon them at a nationally significant level. The Petitioner did not propose an academic component when he filed the petition, nor in response to the RFE when the Director had specifically called for more evidence about the endeavor and an explanation of its importance. Earlier discussions of the proposed endeavor centered on benefit to the company's clients. Therefore, the new claim of "work in the educational sector" appears to represent a material change to the proposed endeavor. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

We agree with the Director that the Petitioner has not met his burden of proof to establish the national importance of his proposed endeavor.

In light of the above conclusions, the Petitioner has not met his burden of proof to show the national importance of the proposed endeavor. Detailed discussion of the remaining *Dhanasar* prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the second and third prongs.[2]

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.