U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31477475

Date: JUL. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 Petitioner did not establish eligibility for a national interest waiver. The matter is now before us on appeal pursuant to 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 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. 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:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

Id.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] 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.

According to the Petitioner's statement provided with the initial filing, he intends to utilize his experience as a software developer and establish a company in North Carolina. He indicates that his proposed endeavor "has a beneficial and national impact" with an innovative method "to contribute to the manufacturing industries" in the United States through his company. The Petitioner intends to provide a "software-specific solution for the manufacturing industries that connects industrial devices and machinery with MES [manufacturing execution systems] and ERP [enterprise resource planning] software, fully customizable and transparent" which "allows the owning industry to achieve the desired communication, without depending on any external service or supplier, thus absorbing the necessary financial and technical efforts." His company will focus on providing services to the textile manufacturing industries due to his experience in this sector. In support of his eligibility, the Petitioner also submitted a business plan; copies of industry articles and reports; recommendation letters; and the Petitioner's statement, with associated financial documents, that he will provide personal funds to invest in the company.

The Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance and issued a request for evidence. The Petitioner's response included two expert opinion letters, articles with citations noting the Petitioner, information about the federal government's initiatives to promote advancements in science, technology, and manufacturing; and a value table from the Petitioner discussing how his endeavor adds "value to a significant number of processes." The Petitioner asserted that his endeavor is "rooted in the textile industry's advanced automation and optimization" and "it is the potential scalability and applicability of this initiative that truly underscores its significance on both a broad scale and national level." He indicates that the

[2] We note that the Director stated in the denial the Petitioner did not qualify for classification as an individual of exceptional ability in the sciences, arts, or business, and did not address the Petitioner's claim that he qualifies as a member of the professions holding an advanced degree. However, the Director acknowledged in the request for evidence that the record established the Petitioner qualifies as a member of the professions holding an advanced degree, and we agree with this determination.

methodologies and techniques he developed for the textile sector "can seamlessly transition into other manufacturing sectors", a streamlined and efficient manufacturing process "can lead to cost savings and higher margins on a national scale", optimization and automation through these methodologies can lead to more specialized roles for workers and "pave the way for a more skilled" workforce, and introducing the methodologies can lead to more environmentally sustainable industries nationwide.

In denying the petition, the Director concluded that though his proposed endeavor as a software developer had substantial merit, the record contained insufficient evidence to demonstrate that the prospective impact of his endeavor rises to the level of national importance. The Director noted that while the submitted evidence emphasized the importance of software development and information technology in the U.S. economy, the focus of the national importance prong within the *Dhanasar* framework is the Petitioner's specific endeavor, not the entire industry or field in which they work. The Director indicated that the record did not establish how his proposed work will potentially have broader implications for the industry or substantial positive economic effects for the region or nation. Regarding the Petitioner's claim that the software application he assisted in developing is important to industries such as retail, financial services, and telecommunication companies, the Director found that the record did not show the impact of these software applications would extend beyond an organization and its clients to impact the industry or field more broadly. The Director further determined that while the recommendation letters discuss the Petitioner's software application experience, the supporting evidence is insufficient to establish that continuing to work on such software for particular clients would rise to the level of national importance.

On appeal, the Petitioner claims the Director erred by making determinations that did not appear to be based on the submitted evidence. He asserts that the record, including his business plan, establishes the national importance of his proposed endeavor to work as a software developer and create a company which will provide a low-cost Middleware[3] software layer specially designed for manufacturing industries. He indicates his company will "connect directly towards obtaining and sending of data among industrial devices" and MES[4] systems they hold, and it will benefit manufacturing companies with the application of digital concepts such as "IoT (Internet of Things)/Industry 4.0"[5] which will be essential for software applications related to the acquisition of a huge volume of data.

Upon review, we acknowledge the denial incorrectly included some references to evidence not relevant to the instant petition, such as indicating the Petitioner was represented by counsel, referring to a prospective employer though the Petitioner intends to be self-employed through his prospective company, and noting the submission of a professional plan instead of a business plan. However, we agree with the Director's ultimate determination that the Petitioner's documentation did not demonstrate, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific

[3] The Petitioner states that "Middleware is software that provides common services and capabilities to applications outside of what's offered by the operating system."
[4] The Petitioner refers to MES as "computerized systems used in manufacturing to track and document the transformation of raw materials to finished goods."
[5] According to the Petitioner, "Industry 4.0 is revolutionizing the way companies manufacture, improve and distribute their products."

endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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. Although the Petitioner discusses the value and importance of software development, especially within the manufacturing sectors, and its impact on the nation as a whole and the U.S. economy, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id.* at 889.

We note the Petitioner's assertions that his company is "poised to revolutionize the national manufacturing scene", his company offers a solution tailored to small and large scale industry and the "autonomous, customizable nature of the software means it can adapt to diverse industrial protocols, making it inherently scalable" as well as "universally applicable" across regions and replicable, due to the "modular nature of the software, combined with its adaptability to various" industries. However, the record lacks sufficient evidence to show the claimed prospective impact of his proposed company. While the submitted articles, reports, and expert opinion and recommendation letters reflect the Petitioner's skills and contributions to software development projects and research, the evidence does not demonstrate that the work the Petitioner intends to perform through his company would result in a significant impact that rises to the level of national importance.

Further, the Petitioner did not demonstrate that his company's operations would provide substantial economic benefits to the region or nation at a level commensurate with national importance, nor did he demonstrate that his company's activities would substantially impact job creation and economic growth, either regionally or nationally. For instance, the Petitioner's business plan projects that his company will have four total employees by the fifth year of operation. Further, the record does not sufficiently show how the business will pay salaries, which are projected to exceed $194,000 by the fifth year, in addition to other business expenses. The business plan indicates the Petitioner will provide his personal money to fund the company and refers to his bank accounts and personal assets in Brazil and Portugal totaling the equivalent of approximately $112,000. However, the record lacks evidence showing investment funds from individuals or companies beyond the Petitioner or other contractual commitments to work with the proposed company. Therefore, the Petitioner has not demonstrated that his company has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make 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 alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.