U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31149819

Date: JUNE 4, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a data scientist/entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 qualified for classification as a member of the professions holding an advanced degree, but that 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates

[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).

that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner proposes to offer consultancy services to businesses through his company, [redacted] The Director concluded that the Petitioner qualified 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 of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Director acknowledged that the Petitioner's proposed endeavor has substantial merit. The Director determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, that he is well-positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director's decision contains "instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." The Petitioner contends that the Director overlooked the submitted evidence and omitted discussing documents submitted with the petition and in response to

the Director's request for evidence (RFE). The Petitioner further argues that the Director failed to review the totality of the evidence and implement the appropriate standard of review.

As previously noted, the first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The record shows that the Petitioner's proposed endeavor is to operate his company in Florida, leveraging his experience in designing and implementing data science solutions as a data scientist. The Petitioner explains that he will also provide expertise in information technology projects as a consultant, specializing in solution architecture, leadership, and project management.

The Petitioner maintains that his proposed endeavor holds national importance because it will benefit "both U.S. businesses and society at large by optimizing and creating data-driven solutions where millions of applications and solutions that leverage transactional and operational processes rest." He argues that his proposed endeavor is vital for diverse clients, ranging from government organizations to corporations across various industries; he asserts that his data science solutions can enhance different aspects of their operations, making them applicable to government agencies and businesses of all sizes. The record includes various documents including recommendation letters, business plan, and personal statement. The Petitioner also submits industry reports and articles to underscore the importance of digital transformation for businesses. He emphasizes the need for professionals like himself to drive market expansion and growth through the implementation of digital technology in businesses. The Petitioner argues that the petition and the response to the RFE contained sufficient evidence to demonstrate his proposed endeavor's national importance.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting its "potential prospective impact." While the Petitioner claims his proposed endeavor is of national importance, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor 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. Similarly, the record here does not include adequate corroborating evidence to show that the Petitioner's specific proposed endeavor offers broader implications in his field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

The Petitioner argues that his contributions as a data scientist and entrepreneur will impact all sectors of the U.S. economy significantly. The Petitioner further contends that he aims to promote future economic expansion, growth, and competitiveness among businesses of all sizes in the U.S. Though we acknowledge the Petitioner's assertions, we conclude that the Petitioner has not shown his proposed endeavor stands to sufficiently extend beyond his clients to enhance societal welfare on a broader scale indicative of national importance.

The Petitioner contends that his proposed endeavor will result in broad and significant economic benefits because it addresses several matters that align with government policies and initiatives. However, the relevant question nonetheless is not the importance of the field, 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.

The Petitioner asserts that by year five his company will offer 10 jobs and garner total revenue of $1,632,382, however, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor 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 include adequate corroborating evidence, to show that the Petitioner's specific proposed work as an entrepreneur and data scientist offering consultancy services offers broader implications in his field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

The Petitioner argues that "neither the law nor the precedent case requires the Petitioner to demonstrate a broader impact in the field to survive the requirements of the First Prong." The Petitioner argues that *Dhanasar* does not mandatorily require a national or global implications within a particular field. We disagree. The Petitioner must still demonstrate the potential prospective impact of his specific endeavor in that area of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Because the documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues 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 established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.