U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27467786

Date: JUL. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as an advanced degree professional, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established 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 U.S. Citizenship and Immigration Services (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;
- The individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

[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).

II. ANALYSIS

The Director concluded the Petitioner qualifies for the EB-2 visa classification as an advanced degree professional. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner indicated in his Application for Alien Employment Certification, Form ETA-750 Part B, and in part 6 of the petition that he will be employed as a CISO – Chielf Information Security Officer. In the petition he states that he will be "responsible for developing an information security program, which includes procedures and policies designed to protect enterprise communications, systems and assets from both internal and external threats."

The first prong relates to the substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director determined that the Petitioner's endeavor - operating his own cybersecurity consulting business as a CISO - has substantial merit, but that he did not satisfy the national importance requirement.[2]

In the denial, the Director took note of the evidence submitted by the Petitioner to establish the national importance of his endeavor, including, among other things, his own statements, reference and employment letters, documentation about the importance of STEM occupations and the cybersecurity field where he seeks employment in the United States, a national interest waiver opinion letter, and other evidence relating to his academic and professional background. Then, the Director discussed the collective shortcomings of the submitted evidence, explaining the reasons why she ultimately determined that the Petitioner did not meet *Dhanasar's* national importance requirement.

On appeal, the Petitioner maintains:

> [He] will be working in his company, [S-], specifically as the owner and [CISO], capitalizing on his specific talents developed over the course of a highly successful and prolific international career in information technology. His enterprise will generate employment opportunities as it further proliferates as described in the business plan. Given his international exposure, he brings new and unique approaches to cyber security defense strategies. His concentration in the financial sector in Brazil will similarly be his focus in the U.S., not just his local client banking institutions. Beyond the banking sector, he will engage with other sectors as appropriate to employ sound, proven and emerging cyber defenses to defeat threats and vulnerabilities.
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> As an applicant possessing a STEM degree and associated experience in a STEM occupation, [he] presents the U.S. with a wealth of urgently needed talent to help defend the U.S. IT infrastructure, both commercial and national security. While he will serve

[2] The Director also concluded that the though the Petitioner met the second *Dhanasar* prong, he did not meet the third *Dhanasar* prong.

> his local clientele, the effects of his efforts transcend the national interest by enhancing confidence in businesses such as banking and commercial applications, enhancing availability, detecting and countering strategies.

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. Here, the Petitioner must demonstrate the national importance of *his* services as a CISO operating his own consulting business rather than the national importance of cybersecurity technologists, the cybersecurity and information technology industries, or the wide range of business fields or industries impacted by cybersecurity threats. 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. Upon de novo review, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his business, future employers and future clientele to impact the cybersecurity field or U.S. economy more broadly at a level commensurate with national importance.[3]

On appeal, the Petitioner points to an opinion letter from a professor, D-H-, as probative evidence of the national importance of his endeavor. However, beyond reiterating information about his proposed endeavor provided in the Petitioner's business plan and other statements in the record, D-H-'s analysis is not specific to the Petitioner's actual endeavor. He states that the Petitioner qualifies under the first *Dhanasar* prong because "[h]is proposed endeavor to provide services in the Information Technology industry in the U.S., is in demand and of national importance." He provides narrative about the tasks typically performed by individuals employed in the cybersecurity industry, noting for instance: "information security analysts assess their organizations' information technology and computer systems, identifying strengths and weaknesses. . . . They blend knowledge of security hardware and software, organizational needs, and cybersecurity risks with organizational policies and industry standards." But he does not adequately address how the Petitioner's endeavor through his work with S- is of national importance.

D-H- also discusses the expertise the Petitioner has gained through his academic career and prior employment in the information technology field, asserting that the Petitioner "with extensive experience in the Information Technology sector, has the capability to render services to companies in the United States." However, the Petitioner's expertise acquired through his academic pursuits and prior employment relates 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 the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. Though D-H- opines that the "United States would greatly benefit from the expertise and skills of an experienced Information Security Architect Lead such as [the Petitioner]," he does not sufficiently identify, analyze or discuss the nature of the specific work the Petitioner will perform within his prospective endeavor in the United States. It is the Petitioner's burden to prove by a

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

preponderance of evidence that he is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id*. Without more, D-H-'s letter does little to support the Petitioner's contention that his proposed endeavor is of national importance.

For these reasons, we conclude that the D-H-'s letter is not probative towards establishing the Petitioner's eligibility under the first *Dhanasar* prong. 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.* For the sake of brevity, we will not address other deficiencies within D-H-'s analyses.

Similarly, the Petitioner has provided reference letters from former colleagues who outline his work accomplishments and describe how the Petitioner has provided beneficial services to the companies that employed him. For example, P-, a CISO for a company that employed the Petitioner abroad, discusses work projects in which the Petitioner was involved, noting that the Petitioner was "the manager responsible for a team of more than twelve people, with strategic attributions such as managing the area's budget (CAPEX and OPEX), defining strategy and solutions in the medium and long term and meeting all the regulatory requirements to which are required." He discussed the Petitioner's specific areas of responsibility, indicating among other things that the Petitioner has "[a] great ability to execute projects related to cybersecurity, I recommend, without a doubt, the concession of [the Petitioner] to permanent residency in the United States of America."

While P-, along with the other letter writers discuss his IT capabilities and experience, and appear to hold the Petitioner in high regard, the submitted letters do not provide sufficient clarity regarding the national importance of the specific endeavor that the Petitioner will focus on should this petition be approved. Generalized conclusory statements that do not identify specific [prospective] contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.,* 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. *Id.* Therefore, we conclude that the reference letters in the record offer little insight to the matter at hand. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chaw*athe, 25 I&N Dec. at 376.

Additionally, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. For instance, the Petitioner asserts on appeal that S- "[w]ill generate employment opportunities as it further proliferates as described in the business plan." The business plan states that S- is to commence operations in 2022 and forecasts that S- will generate income of $100,000 in its first year of operation, which will steadily climb each year to reach revenues of over $900,000 by the end of its fifth year of operation. The Petitioner estimates his business will create at least five jobs within this five-year timeframe. However, though the business plan discusses the correlation between gaining business clients and the need for additional employees, the plan does not sufficiently detail the basis for the revenue and staffing projections, nor does it adequately explain how the revenue and staffing projections will be realized.

Here, the Petitioner has not demonstrated that his business will impact the nation at a level commensurate with national importance. For instance, he has not shown that his company's future staffing levels would provide substantial economic benefits in Florida or the United States. While the Petitioner asserts that S- will hire five U.S. employees within five years, he has not offered sufficient evidence that the area where the company operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

The Petitioner also asserts on appeal that if a petitioner "is engaged in a STEM field of study or industry related to critical and emerging technologies, [he] may very likely qualify for a national interest waiver under [USCIS' policy guidelines]." It is important to note that being employed in a STEM field does not automatically show eligibility for a national interest waiver. Specifically, the STEM endeavor must have *both* substantial merit and national importance in respect to the first prong of *Dhanasar*. *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. Here, the Petitioner has shown the former, but not the latter.

Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *Id.* In this case, the record does not suggest that the Petitioner intends to advance STEM technologies and research. While the Petitioner will likely offer valuable cybersecurity-related services to S-'s clients, we conclude the Petitioner has not established how his individual employment would affect STEM employment levels in his industry or the U.S. economy more broadly consistent with national importance.

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. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Therefore, we decline to reach whether he meets the other prongs under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

We conclude that the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.