U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29022299

Date: JAN. 8, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an IT manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and 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 Nebraska 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 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.

In the petition, the Petitioner described his proposed endeavor as a plan "to become a successful business owner and software developer." The Petitioner explained in his statement, "my education and professional experience have uniquely prepared me for a continuation of my very successful software developer career in the United States, and I would love nothing more than to contribute my talent, experience, and ability as a software developer to the benefit of the United States of America [sic]."

In a request for evidence (RFE), the Director informed the Petitioner that he "did not provide documentation specifically describing what specific projects and activities the proposed endeavor will

consist of and how said actions will produce these broad results." The Director further noted "it is unclear what your proposed endeavor is, and as a result, whether or not it has substantial merit or national importance."

In response to the RFE and in support of his claim that the proposed endeavor has substantial merit and national importance, the Petitioner provided published articles and industry reports addressing shortage of workers and projected job growth in computer and information technology occupations. The Petitioner also submitted a February 2022 report by a subcommittee of the National Science & Technology Council titled "Critical and Emerging Technologies List Update (CET)," which discusses areas that are of particular importance to the national security of the United States including advanced computing. In addition, the Petitioner submitted a business plan and explained in his response to the RFE that he plans to "open an IT consulting firm in [redacted] Illinois" in order to "provide professional and reliable IT consulting services to private and public companies in the United States to help them operate sustainably."

In denying the petition, the Director determined that the Petitioner had demonstrated the proposed endeavor's substantial merit but not its national importance. In particular, the Director found that the Petitioner "did not provide documentation specifically describing what specific projects and activities the proposed endeavor will consist of and how said actions will produce these broad results."

On appeal, the Petitioner resubmits the same documents and asserts that the Director "failed to give due weight to the business plan." The Petitioner further asserts that the proposed endeavor is "an IT and cybersecurity consulting firm called [redacted] that is set to be based in [redacted], Illinois. [The Petitioner] intends to provide his services to many entities that need IT assistance, particularly in the field of cybersecurity." The Petitioner reiterates that his consulting firm will be "able to contribute to the overall U.S. economy by providing expert services within the Information Technology industry, optimizing the economy for the digital age and contributing to job creation and tax revenue, as well as improving the security culture of U.S. companies as they digitize their operations."

We agree with the Director's decision that the Petitioner has demonstrated the proposed endeavor's substantial merit but not its national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Further, 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 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner's statements reflect his intention to "provide services to many entities" and "expand his clientele" to impact the field of cybersecurity, 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, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his clients and specific companies he plans to work with to impact the IT and cybersecurity field or the U.S. economy more broadly at a level commensurate with national importance.

As previously mentioned, the Petitioner provided documentation relating to industry reports regarding computer and information technology occupations. In addition, the Petitioner contends that his endeavor "falls squarely within the CET subfield of Communications and Networking security." The Petitioner also asserts that his "unique skill set positions him as one of the professionals who can transform the US digital security sector to meet the demands of the future. This will not only benefit the national economy, but national security interests as well." Though we acknowledge the Petitioner's experience and skill set, the Petitioner must nonetheless demonstrate the national importance of his specific proposed endeavor of owning and operating his IT and cybersecurity consulting firm rather than the importance of the national initiatives and interests, industries, or fields.

The Director addressed the lack of documentation "specifically describing what specific projects and activities the proposed endeavor will consist of and how said actions will produce those broad results" in the RFE and in the decision denying the petition. In response, the Petitioner stresses his prior employment experience, qualifications, and past contributions and achievements. Here, although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first Dhanasar prong. These experiences are material to the second Dhanasar prong—whether an individual is well positioned to advance a proposed endeavor; however, they are immaterial to the first Dhanasar prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. See id. at 888-91.

The Director also discussed the Petitioner's business plan at length and found that the Petitioner "has not shown that the company's future staffing levels and consulting activity stand to provide substantial economic benefits in Illinois or the United States. While the forecast for the business indicates that the business has growth potential, it does not demonstrate the benefits to the regional or national economy resulting from the petitioner[']s undertaking would reach the level of 'substantial positive economic effects' contemplated by Dhanasar." The Director further noted that the Petitioner has not demonstrated his specific endeavor "has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects" for the United States by offering "sufficient evidence that the company would employ a significant population of workers in an economically depressed area or that the endeavor would offer Illinois or its population a substantial economic benefit through employment levels or business activity." We agree. The Petitioner's proposed endeavor appears to benefit his prospective clients and companies that the Petitioner plans to work with; however, it does not appear to have broader implications or substantial positive economic effects indicative of national importance. See Dhanasar, 26 I&N Dec. at 889-90.

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.