U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28583026

Date: SEP. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a computer systems consultant and entrepreneur, 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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. 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[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).

- 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 Director concluded that the Petitioner qualifies 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 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.

In a professional plan and statement submitted with the petition, the Petitioner stated that he intends to use his expertise and knowledge to work as a computer systems consultant/entrepreneur "and contribute to the U.S. economy through the development of tech projects" through the development and expansion of his U.S. company, [redacted]

He further stated:

> In a nutshell, [the company] will be based in [redacted] Florida and will assist companies in defining their tech strategies by evaluating their business objectives, creating transformation roadmaps, and creating plans to execute such solutions. It will primarily focus on end user computing and in the deployment of Citrix and Microsoft strategies, and it will transform the way U.S. companies and Americans work, especially by leading the implementation of new technologies that support an enhanced remote work experience. Additionally, the company will: 1) create plans for adoption; 2) run proof of concepts; 3) identify the right technologies; 4) plan the execution; 5) execute the project; 6) support post-project execution.

In addition to his professional plan and statement, the Petitioner submitted his company's business plan, copies of his academic credentials, an expert opinion letter, letters of recommendation, and industry articles and reports.

The Director determined that the Petitioner's initial filing did not establish that the proposed endeavor had substantial merit or national importance. The Director observed that the Petitioner did not provide specific insight as to what he intends to do in the United States, and requested a detailed description of the proposed endeavor so that the Director could evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted a new professional plan and statement which provided further information about his proposed endeavor. The Petitioner stated:

> In order to advance my proposed endeavor in the U.S., I am working to ensure that companies of any size and industry in the U.S. are provided with the best IT solutions with an emphasis on virtualization and cloud mapping to further develop their practices, to reach their goals and contribute to the job generation in the U.S. Currently, I am working as a freelance expert in IT infrastructure virtualization and cloud computing projects. As a specialist in Citrix solutions, a solution that is present in most large corporations in the U.S. and the world, and whose headquarters is in Fort Lauderdale, I have been invited to participate in the selection process by Citrix System. Additionally, I intend to apply for the various positions available in the U.S. market for IT management or Citrix Solutions Specialist either within Citrix System itself or in one of its partners or major customers.
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> For example, through my work providing IT services to U.S. companies whether as a consultant or a direct employee, I can direct and manage teams to implement and develop business tools and resources that will greatly increase the performance of businesses allowing to bring to light their full potential permitting them to reach several companies, institutions, and entrepreneurs in many areas of the country, leading to an increase in their economic activities and generating new jobs.

The Petitioner also submitted additional articles and reports as well as previously submitted evidence in support of his eligibility for a waiver of the job offer.

In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that his proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that USCIS "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law to the detriment of the Appellant." The Petitioner also asserts, through counsel, that the Director disregarded the evidence submitted, and provides a brief emphasizing his qualifications as a computer systems consultant and asserting that the evidence of record establishes the national importance of the proposed endeavor.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

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 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.

Preliminarily, we note that the Petitioner's proposed endeavor is material to whether the endeavor is of national importance. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Here, the Petitioner's proposed endeavor is uncertain. Initially, the Petitioner claimed that he intended to develop and expand his U.S. company, [redacted] Florida. The company's business plan indicated that the company anticipated hiring 25 employees and achieving $3,577,600 in revenue by its fifth year of operations. It further indicated that the company would sell over 9,000 hours of consulting services, 170 cloud computing services contracts, and over 10,000 Citrix and Microsoft licenses in its first five years, and also anticipated opening a second office in [redacted] Georgia during that time.

In response to the RFE, however, the Petitioner claimed in a new professional plan and statement that he intended to "apply for the various positions available in the U.S. market for IT management or Citrix Solutions Specialist either within Citrix System itself or in one of its partners or major customers" as either a consultant or direct employee. No further mention of his intention to develop his own company was raised in response to the RFE. On appeal, the Petitioner repeats his original assertion, stating that his proposed endeavor "relies on developing [redacted] as an IT firm that aims to help companies to define their strategies based on business objectives, create a transformation road map, and execute it." On appeal, he no longer asserts that he will seek employment with IT companies in the United States.

The Petitioner's specific proposed endeavor, therefore, remains unclear. While we acknowledge his consistent intent to provide computer consulting services, it is unclear whether these services will be provided through his U.S. company, or by him as a direct employee or consultant for other clients or entities. The Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, the record contains no documentation demonstrating the existence of the Petitioner's claimed U.S. company, and the record is devoid of evidence that would demonstrate the Petitioner's proposed endeavor of providing computer consulting services will have potential to provide national or global implications within the field, employ U.S. workers, or otherwise have other substantial positive economic effects, particularly in an economically depressed area. Aside from generally asserting that he will provide computer consulting services, his specific proposed endeavor is unclear,

and we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its national importance.

The Petitioner's business plan explains his intent to start an IT consulting company in Florida, expanding to Georgia in five years. The business plan states that his new business will benefit the U.S. economy because his services will help companies design strategies based on their business objectives and help them adopt more innovative technologies so they can become more agile and flexible, particularly in the area of remote work. Further, the business plan projects hiring 25 employees and earning revenue of approximately $3.6 million by its fifth year of operations. However, the record does not sufficiently detail the basis for the company's financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner also has not provided corroborating evidence, aside from claims in his business plan, that his company's future staffing levels and business activities stand to provide substantial economic benefits to underutilized areas of Florida and Georgia. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that earning revenue of approximately $3.6 million and creation of 25 jobs by year five rises to the level of national importance.

Throughout the record and in his personal statements, the Petitioner points to his background, education, and experience in his field.[2] The Petitioner also provided several letters of support that discuss his computer consulting capabilities and experience. The Petitioner's knowledge, skills, and experience in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

The Petitioner claims that his proposed endeavor has national importance because IT impacts all sectors of the economy and "is essential to national and international productivity." He further stated that IT "plays a crucial role in the development of industries, including, but not limited to . . . business, finance, technology, and many others." Further, the Petitioner claims that the United States faces a steep shortage of IT professionals and states that his services will help alleviate such a shortage. In support of his arguments, he offered information, including articles and reports, about the importance of IT consulting and its crucial role in the U.S. economy, shortages of IT professionals in the industry, and the effect of COVID-19 on the IT sector. While these articles provide useful background information, they are of limited value in this matter, as the Petitioner's specific proposed endeavor remains unclear.[3] Furthermore, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner

[2] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

[3] We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the status of the U.S. IT sector impacts the U.S. people and its economy. On appeal, counsel emphasizes the Petitioner's experience in the field and generally asserts that his proposed endeavor will help alleviate the shortage of IT professionals and help the national economy by providing crucial IT consulting services to U.S. companies. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2 (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

has not established how his individual employment in one or more of the roles identified would affect the U.S. economy more broadly consistent with national importance. Further, it is important to note that the shortage of IT professionals does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The record contains an expert opinion letter from a professor of computer science, information systems, and cyber security at [redacted] University who concludes that the Petitioner's proposed work has national importance. But the professor does not base his conclusion on the national importance of the Petitioner's specific endeavor. Although he recites the Petitioner's career history and accomplishments, and praises his success as an IT professional in Brazil, his findings stem from the significance of IT and cyber security, particularly in relation to IT consulting for U.S. companies engaging in business with Brazil. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable"). The letter does not contain sufficient information and explanation of the Petitioner's proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work in IT consulting offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

While the Petitioner's statements reflect his intention to provide valuable IT and computer systems consulting services for his clients or employers, he has not offered sufficient information and evidence to identify the proposed endeavor with specificity or otherwise 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. *See Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company or clientele to impact his field, the IT sector, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, 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. 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 financial consulting 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.

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. 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.