U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27437853

Date: JUL. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification under the employment-based, second-preference ("EB-2") immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers - and related requirements for certifications from the U.S. Department of Labor (DOL) - if petitioners demonstrate that waivers would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate that his proposed endeavor merits a national interest waiver. Specifically, the Director found insufficient evidence that: the Petitioner's undertaking has "national importance;" he is "well-positioned" to advance the endeavor; or a waiver would benefit the United States. On appeal, the Petitioner asserts that the Director misapplied the evidentiary standard of proof.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the Petitioner has not demonstrated the national importance of his proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, petitioners must demonstrate their qualifications for the requested EB-2 immigrant visa category, either as members of the professions holding "advanced degrees" or as noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category generally requires prospective U.S. employers to seek noncitizens' services and obtain DOL certifications to permanently employ them in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections are in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, we have established a framework for adjudicating these waiver requests. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

The record shows that the Petitioner, a Brazilian native and citizen, earned a technologist degree in data processing and a post-graduate certificate in design, project, and application management in his home country. He has more than 25 years of employment experience in the information technology (IT) field. The Petitioner proposes to establish his own IT consulting company in [redacted] focusing on end-user computing and project management. He states that he eventually plans to expand the business's operations across the United States.

A. The Requested Immigrant Visa Category

The Petitioner claims that the Director found him qualified for the requested immigrant visa category as an advanced degree professional. But the record shows that the Director did not consider his eligibility as either a noncitizen of exceptional ability or an advanced degree professional. We decline to determine the Petitioner's qualifications for the requested EB-2 immigrant visa category in the first instance. Thus, we will next review the Director's denial of the Petitioner's national interest waiver request.

B. Substantial Merit

Petitioners may demonstrate the merits of their proposed U.S. endeavors in a variety of fields, including business, entrepreneurialism, science, technology, culture, health, or education. *Matter of Dhanasar*, 26 I&N Dec. at 889. Endeavors with the potential to create significant economic benefits may have substantial merit. *Id.* But positive economic impacts are not required. "[E]ndeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." *Id.*

The Petitioner's proposed IT consultancy has the potential to generate economic benefits in the United States, including jobs for U.S. workers and growth of U.S. businesses. Also, progress in the IT field is important to U.S. competitiveness and national security. *See generally* 6 *USCIS Policy Manual* F(5)(D)(2), www.uscis.gov/policy-manual. We therefore agree with the Director that the Petitioner has demonstrated his proposed endeavor's substantial merit.

C. National Importance

When considering whether a proposed endeavor has national importance, USCIS focuses on the particular undertaking. *Matter of Dhanasar*, 26 I&N Dec. at 889. Specifically, the Agency examines an endeavor's "potential prospective impact." *Id.* "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* Also, a nationally important undertaking need not have a nationally geographic scope. "An 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.

As the Director found, the Petitioner has not demonstrated that his endeavor's impact would rise to the level of national importance. He submitted a business plan projecting that the consultancy's annual revenues would steadily rise from $764,800 in its first year of operations to $6,924,800 in its fifth year. Also by the end of its fifth year, he claims that the business would employ six full-time workers - including himself - and 10 part-time employees.

After the same five-year period, however, the company's business plan details only five full-time employees: the Petitioner as chief executive officer; a director of administration and project management; a business developer; a "cloud" consultant; and a developer. The business plan also does not mention the company's employment of any part-time workers. If the business employs less workers than the Petitioner claims, it might also generate less revenues. Further, the record does not indicate that the business would benefit an economically depressed area, and the Petitioner has not claimed that the company would provide advances in the IT field.

On appeal, the Petitioner contends that the Director did not properly value evidence of the endeavor's national significance. He asserts that his business would generate jobs for U.S. workers, improve their wages and working conditions, and help the local community attract investments and economic developments. He also contends that his "in-depth" knowledge of the Brazilian business environment would help U.S. companies and the nation's economy by boosting trade between the countries. He cites his submission of "industry reports and articles" regarding the importance of immigrant entrepreneurs to the U.S. economy and the need to re-think business operations in a digital age.

As previously indicated, however, USCIS must "focus[] on the specific endeavor" and "its potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not sufficiently demonstrated that his *particular* endeavor would generate enough U.S. jobs, attract enough investments, and transfer enough knowledge of Brazil's business environment to enough U.S. companies to attain national significance.

The Petitioner's case is similar to *Dhanasar*. There, we agreed that a proposal to teach U.S. students in the science, technology, engineering, and mathematics (STEM) disciplines had substantial merit. *Id.* at 893. But we concluded that the petitioner did not demonstrate that he "would be engaged in activities that would impact the field of STEM education more broadly" and thus did not establish the proposed endeavor's national importance. *Id.* Here, we similarly agree that an IT consultancy has substantial merit. But the Petitioner has provided insufficient evidence that his *specific* undertaking

would broadly affect the national economy or the IT field. We will therefore affirm the petition's denial.

Our affirmance resolves this appeal. Thus, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding: the Beneficiary's eligibility for the requested immigrant visa category; his qualifications to advance his proposed endeavor; and a waiver's benefit to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their decisions).

III. CONCLUSION

The Petitioner established the substantial merit of his proposed endeavor. But the record does not demonstrate that the undertaking has national importance.

ORDER: The appeal is dismissed.