U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26928034

Date: MAY 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks employment-based second preference (EB-2) immigrant 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 the Petitioner did not establish 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates that:

[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.[2]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework. While we do not discuss each piece of evidence, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889. The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In *Dhanasar*, we further noted that "we look for the 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 determined in *Dhanasar* 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. 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's proposed endeavor is to continue his work in the field of civil engineering as the president of his consulting company, which he states will assist in the implementation of exceptional projects to promote U.S. infrastructure, boost economic activity, and create jobs for U.S. workers. He intends to manage projects within various industries for his clients in Florida and Massachusetts and to train others using his methods. Similar to the petitioner in *Dhanasar*—and as described above—the Petitioner here has not established that his training or teaching activities would rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. While the Director determined that the proposed endeavor has substantial merit, he concluded that the record did not establish that the proposed endeavor has national importance.

On appeal, the Petitioner asserts that he has previously provided sufficient evidence to show the national importance of his proposed endeavor and states that the Director failed to consider each piece of evidence in the record. The Petitioner states the following (quoted as written):

> The USCIS stated that the business plan, testimonial letters, submitted by the Petitioner *"do not show that the prospective impact of the specific proposed endeavor has implications beyond the company, its clients, and its employees, rising to the level of*

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

> *national importance" ... "Several individuals discuss the beneficiary's personal and professional attributes in letters of support. However, they lack specific, detailed information to show the beneficiary's specific proposed endeavor will be of national importance".* This clearly shows that the USCIS failed to consider multiple pieces of evidence for their relevance and probative values concerning the element of national importance.

The Petitioner does not explain how the Director's conclusions with regard to the business plan and letters of endorsement demonstrate that USCIS did not consider all of the evidence of record. Upon review, it appears that the Director did review the entirety of the record. The Director's decision addresses and quotes from specific evidence in the record and explains why that evidence does not establish the Petitioner's eligibility under the first prong of the *Dhanasar* framework. In addition, the Director noted in his decision that the record contains several foreign language documents unaccompanied by certified English translations and that, as such, those documents could not be considered as evidence. *See* 8 C.F.R. § 103.2(b)(3). The Director also noted that the record contains several documents concerning the Petitioner's eligibility that post-date the filing date of the petition, stating that the material could not be considered as evidence because a petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12).

Upon review of the letters of endorsement, we conclude that, while they speak to the Petitioner's character and the quality of his work, they do not provide sufficient detail concerning the impact of the Petitioner's proposed endeavor or how such impact would extend beyond his company and clients. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.[3] Furthermore, we note that the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of his proposed work. Upon review of the business plan, we agree with the Director's determination that it includes discrepancies in its projections and does not provide a source or rationale to explain how the projections were calculated. And while the business plan states that the Petitioner's company will focus on creating jobs in cities identified by Stacker as having certain percentages of individuals living below the poverty line in 2019, the Petitioner did not provide evidence to establish that this information is from a credible or objective source. The business plan does not provide credible information to establish that the Petitioner's proposed endeavor has national importance.

The Petitioner also asserts that his proposed endeavor is nationally important due to the need to address infrastructure in the United States, citing articles and reports in the record. We acknowledge these circumstances surrounding the U.S. infrastructure. We further acknowledge the Petitioner's ambition to contribute to the alleviation of housing demands in areas of high-density population. However, the Petitioner has not provided sufficient evidence to establish how the implications of his proposed endeavor to provide consulting services for his clients in Florida and Massachusetts rises to the level of national importance. The Petitioner has not demonstrated that the specific endeavor he proposes to

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[3] The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work operating a consultancy company, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 his eligibility for a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.