U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30624480

Date: APR. 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a Spanish language educator, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as an advanced degree professional but did not demonstrate that they are well positioned to advance the endeavor, or that on balance 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 pursuant to 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. 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.

Whilst 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 USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate 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 petition 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner has attained the foreign equivalent of a bachelor's degree in modern languages and a master's degree in teaching Spanish as a foreign language from an accredited institution of higher education in the United States. But the Director concluded that the evidence of record did not demonstrate the Petitioner's eligibility under the second and third *Dhanasar* prong.[1]

[1] The Director's decision did not discuss whether the evidence in the record demonstrated the Petitioner's proposed endeavor's substantial merit and national importance. And we harbor significant doubts about whether the Petitioner's proposed endeavor was expressed in a consistent manner. For example, the Petitioner's initial submission expressed a nascent intention to make "strategic alliances with non-profit organizations" to essentially serve as an educational consultant promulgating a self-developed software application. However, the Petitioner's response to the Director's

A. Well Positioned To Advance The Proposed Endeavor

On appeal, the Petitioner presents a brief but does not add new evidence or assertions to address the reasoning the Director provided in the decision. In the request for evidence (RFE) and the decision, the Director addressed many of the Petitioner's assertions regarding how well the Petitioner was positioned to advance the proposed endeavor. The Director discussed multiple pieces of evidence individually and quoted material in several instances. For example, the Director discussed the contents of the Petitioner's petition support letter authored by counsel, the Petitioner's business plan, proposed endeavor statement, updated and initial petition support letter, as well as additional evidence Petitioner submitted into the record, such as their teaching certificate from the state of Texas, and software application development documentation. The Director identified the evidence and explained the specific reasons why the evidence did not establish the Petitioner's eligibility under the *Dhanasar* analytical framework.

We adopt and affirm the Director's analysis and decision regarding the first *Dhanasar* prong. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F3d. 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Below we provide individualized consideration to the petition and to many of the Petitioner's appellate claims.

As the Director correctly concluded, the Petitioner did not adequately demonstrate with material, relevant, or probative evidence that they were well positioned to advance their proposed endeavor. As the Director correctly observed, the Petitioner did not provide a cognizable plan or model for their future activities. As we said earlier, the Petitioner's initial plan to "strategize" with non-profit organizations morphed into an intention to establish and direct their own NGO in the United States. This rendered the remaining evidence in the record unreliable as it inconsistently referred to either the Petitioner's intent to work with non-profits or establish their own non-profit. The *Dhanasar* analytical framework cannot be applied to two dueling endeavors. So we are unable to gauge how well positioned the Petitioner is to advance their proposed endeavor when the Petitioner has not reliably identified what their proposed endeavor is.

The Petitioner also asserts the Director abused their discretion in failing to address all evidence, citing *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) in support. The court in *Buletini*, however, did not reject the concept of examining the quality of the evidence presented to determine whether it

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request for evidence (RFE) contained a business plan wherein the Petitioner expressed an intention to establish and direct their own non-governmental organization (NGO) in the United States. Inconsistent expressions of a proposed endeavor inhibit an evaluation into whether the endeavor is substantially meritorious or nationally important. But since our decision today is dispositive as to the Petitioner's eligibility for a national interest waiver of the job offer, and thus the labor certification requirement, we will not evaluate the substantial merit or national importance of the Petitioner's proposed endeavor further and reserve it. *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).

establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. And the Petitioner also cites *Chursov v. Miller*, 1:18-CV-02886-PKS (S.D. NY 2019) that a "partial analysis shall lead to an unreasonable and, thus, arbitrary decision." But the Petitioner has not demonstrated the specific way the Director's analysis was incomplete other than a generalized assignment of error.[2] When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor it is necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (Citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). We conclude the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

As the Director correctly explained, the Petitioner has not established eligibility under the *Dhanasar* analytical framework. We adopt and affirm the Director's analysis and decision regarding the second prong of the *Dhanasar* analytical framework and conclude the Petitioner has not establish they are eligible for or otherwise merit a national interest waiver.

III. CONCLUSION

For the aforementioned reasons, the Petitioner has not satisfied the second prong of the *Dhanasar* analytical framework. Because the evidence in the record does not establish that they are well positioned to advance their proposed endeavor as required by the second prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated their 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 their eligibility under the first and third prong outlined in *Dhanasar*. *See Bagamasbad*, 429 U.S. at 25 ("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. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.

[2] We are not bound to follow the unpublished decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I7N Dec. 715 (BIA 1993).