U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37391391

Date: APR. 02, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an electro-mechanical professional, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner merited a waiver of the job offer and labor certification requirements for EB-2 classification. The Director also dismissed a subsequent motion to reopen and reconsider their decision. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that 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 the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is 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.

Id.

II. ANALYSIS

With his initial petition, the Petitioner stated that he intends to work in the United States as an electro-mechanical professional in the hydrocarbon extraction industry. The Petitioner argued that his role as an electro-mechanical professional was crucial for the organizations for which he worked to ensure the safety and profitability of their operations and the industry at large. The Director issued a Notice of Intent to Deny (NOID), stating that the Petitioner had not provided sufficient evidence to establish, among other things, that his proposed endeavor to work as an electro-mechanical professional with an unnamed organization was nationally important.

In response to the NOID, the petitioner provided an additional personal statement, a business plan, and additional materials related to the Petro-chemical industry. Unlike his initial submission where the Petitioner claimed to want to continue working as an electro-mechanical professional, his business plan indicates he intends to open his own business in [redacted] Massachusetts and act as the Corporate Executive Officer (CEO) of that organization. The Director denied the initial petition, stating that the Petitioner did not meet any of the three prongs of the *Dhanasar* framework. On motion, the Petitioner argued that he qualified for a national interest waiver based on his revised proposed endeavor creating a business and adding jobs to the economy. The Director dismissed the motion because it did not establish that their prior decision contained an erroneous conclusion of law or statement of fact or provide additional, previously unavailable, evidence that established his eligibility.

On appeal, the Petitioner argues, again, that creating a business that adds jobs to the economy and focuses on providing electro-mechanical services and training to the energy sector is nationally important and that he is well-positioned to advance his proposed endeavor. To support this assertion he resubmits the evidence provided to the Director on motion. A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (requiring beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.) The Petitioner's change to his proposed endeavor from electro-mechanical professional actively engaged in providing services to an organization to an entrepreneur and business owner, even in the electro-mechanical field, is a material change to his proposed endeavor. As such, we will review the Petitioner's request for a national interest waiver based on his proposed endeavor at the time of filing.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of 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. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Petitioner has provided extensive materials related to the importance of the petroleum industry and its reliance on electro-mechanical professionals to maintain the sensitive and crucial equipment necessary to extract and process hydrocarbons. However, the Petitioner must establish the national importance of his proposed endeavor rather than the importance of electro-mechanical professionals, the petroleum industry, or energy industry. The relevant question is not the importance of the 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. Further, "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.* Also, "[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 the extent the Petitioner argues that he would be filling a void in the job market by offering his skills as an electromechanical engineer to the United States, we note that the purpose of the Department of Labor's certification process is to identify needs in the U.S. job market and provide opportunities for aliens to fill those positions. Therefore, a shortage of workers in a particular field does not, by itself, establish that the Petitioner's proposed endeavor is nationally important.

Upon review of the record, including the Petitioner's personal statements, letters of support, expert opinion letters, and industry materials, we agree with the Director that the Petitioner has not established his proposed endeavor sufficiently extends beyond his potential future employer to impact the industry or the field of electro-mechanical engineering or energy more broadly, at a level commensurate with national importance. In *Dhanasar*, we determined 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. Similarly, the Petitioner did not demonstrate how his claimed employment as an electro-mechanical professional has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. *Id.* at 890. Even if we considered the Petitioner's revised endeavor of establishing an electro-mechanical training and services business in [redacted] Massachusetts, the proposed economic impact of the Petitioner's endeavor does not rise to the level of national importance or show how it would have the potential to impact the field of electro-mechanical engineering more broadly.[2]

Because the Petitioner did not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of his eligibility under the second and third

[2] We note that the Petitioner has filed a second NIW petition where he claims that he will establish a business servicing wind turbines rather than working in the hydrocarbon industry.

prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.