U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37831917

Date: APR. 15, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a health and safety specialist, seeks employment-based second preference (EB-2) immigrant classification as 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 a waiver of the required job offer, and thus of a 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 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

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,[2] grant a national interest waiver if the petitioner demonstrates that:

- 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. EXCEPTIONAL ABILITY

The Director determined the Petitioner met at least three criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). However, the Director found the Petitioner still did not establish exceptional ability, as a totality of the evidence did not establish the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The Director found that "[a] review of the record does not establish that this [eligibility requirement] has been met."

On appeal, the Petitioner asserts the Director did not provide sufficient explanation or analysis for the determination the Petitioner does not possess a degree of expertise significantly above that ordinarily encountered. The Petitioner contends he has met this eligibility factor and the "absence of individualized commentary, detailed reasoning, or any substantive analysis deprives [Petitioner] of the ability to understand the alleged shortcomings in his petition." We agree the decision lacks substantive analysis regarding the Petitioner's qualification for the underlying EB-2 visa classification. However, as we concur with the Director that the Petitioner has not demonstrated his proposed endeavor has national importance, as discussed below, we agree that the Petitioner has not established overall that he merits a national interest waiver.

III. NATIONAL INTEREST WAIVER

The Petitioner indicated he endeavors to be a health and safety specialist in the United States with the intent of providing his services to both "high-profile American enterprises and the U.S. government" and "private companies and public institutions that need qualified professionals to assure safety, risk compliance, and best practices." The Petitioner expressed an intent to train others in his field to "bolster[] their abilities in various health and safety regulations, certification requirements, and compliance." The Petitioner also intends to create "a comprehensive safety app designed to integrate security protocols, real-time updates, and interactive training modules," in addition to "case studies and practical applications." The Petitioner deems his endeavor an "innovative approach to improving safety practices in the manufacturing sector." The Petitioner indicates his app includes "safety games,

[2] *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).

quizzes, and real-time hazard alerts," to "create a tool that modernizes training and hazard management in the workplace."

The Director determined that though the Petitioner's proposed endeavor to assist U.S. companies and institutions in the area of health and safety operations has substantial merit and he is well-positioned to advance it, he has not demonstrated the national importance of the endeavor or that, on balance, waiving the job offer requirement would be of benefit to the United States.

A. Substantial Merit and National Importance

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.* In *Dhanasar*, we 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.

On appeal, the Petitioner asserts the Director did not provide a detailed explanation of the reasons for denial and did not conduct a thorough assessment of the submitted evidence.[3] The Petitioner claims the Director disregarded letters submitted from an expert in his field and letters of recommendation from those with knowledge of his achievements. We have reviewed the letters of support submitted on the Petitioner's behalf. The letters of recommendation attest to the high level of the Petitioner's work as a health and safety specialist for his employers and the resulting positive effect on workplace safety. In a letter from A-H-, a company director and principal consultant at [redacted] and [redacted], states the Petitioner's intent to create a safety app is characterized as an "innovative due to its interactive and accessible approach" and "expected to significantly enhance workplace safety." However, A-H- specifies the intended users for the Petitioner's app would be "implementation in small, medium, and large companies" and does not explain how the Petitioner's endeavor would extend beyond his employer and its clients to impact workplace safety at a level of national importance.

The Petitioner claims his endeavor "goes beyond serving individual clients or employers, addressing a systemic need in the U.S. manufacturing and industrial sectors: improved health, safety, and environmental compliance on a national scale." The Petitioner further asserts his endeavor "aligns with national priorities such as workforce safety, sustainability, and economic resilience." We acknowledge the importance of health and safety in the manufacturing and industrial sectors.

[3] On appeal, the Petitioner listed evidence submitted in support of his petition. This list, in part, contains evidence submitted in support of the second *Dhanasar* prong, which shifts the focus from the proposed endeavor and considers factors such as education, skills, knowledge, record of success in related or similar efforts, a model or plan for future activities, progress toward achieving the endeavor, and the interest of relevant entities and individuals in the endeavor. *Id.* at 890. Insofar as evidence is not relevant to demonstrating the national importance of the Petitioner's endeavor, it will not be considered in analysis of the first *Dhanasar* prong.

Similarly, we acknowledge the economic value of the U.S. manufacturing sector, the cost of fines for regulatory non-compliance, and the importance of sustainable growth in designing manufacturing facilities. But our assessment of national importance does not focus on the importance of a field in general, but instead "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The Petitioner contends his intent to develop his comprehensive safety app "has the potential to influence industry-wide best practices." However, as stated, the record does not establish how this safety app would impact workplace safety on a national or even global scale, beyond the Petitioner's own employer and the employer's clients who utilize his app. The Petitioner also asserts that in continuing his work as a health and safety specialist, he will guide "American manufacturing companies through the complexities of regulatory compliance" and contribute to the "design and development of manufacturing and distribution plants" with an emphasis on "safety, sustainability, and operational efficiency." The Petitioner states his intent is to "create industrial environments that are compliant with safety standards and also conducive to employee well-being and productivity." However, though the Petitioner has established his skill in his position and established the importance of health and safety specialists, he has not sufficiently detailed or documented how his work in the health and safety field would be materially different from other similarly experienced employees in this field. Overall, the Petitioner has not met his burden of demonstrating his own personal endeavor's broader national implications in the health and safety field.

The Petitioner asserts his work supports economic development as his projects have driven growth in the automotive and construction industries and "led to the creation of hundreds of jobs, both directly and indirectly." Specifically, the Petitioner contends the Petitioner's projects have "resulted in the creation of 263 jobs through his work with [redacted] and future projects are "expected to generate 16 more positions." The Petitioner also asserts his workplace safety expertise has a positive ripple effect on job creation and supports the growth of the manufacturing sector. However, the Petitioner has not demonstrated these employment positions have arisen or would arise directly from his own endeavor nor substantiated that these numbers would have a national impact on the U.S. manufacturing sector, which he indicates has "a reported value of $2.3 trillion in 2023." Although any economic activity resulting from the Petitioner's work has the potential to positively impact a local economy, he has not provided sufficient explanation of the prospective national impact directly attributable to his proposed endeavor or established how his endeavor would impact an economically depressed.

For all the reasons discussed above, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

B. Additional *Dhanasar* Prongs and Ineligibility

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach and reserve whether the Petitioner has met the additional prongs of 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 the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.