U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37392532

Date: APR. 16, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 Petitioner had not established the national importance of his proposed endeavor, among other findings. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*. If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. *Id*.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

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. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree, a determination the record supports.[3] In denying the petition, the Director determined that the Petitioner's proposed endeavor had substantial merit under the first *Dhanasar* prong. However, the Director concluded that the Petitioner had not sufficiently demonstrated his endeavor's national importance under the first *Dhanasar* prong.[4]

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id* at 889. The term "endeavor" is more specific than the general occupation; an individual should offer details not only as to what the occupation normally involves, but what types of work they propose to undertake specifically within that occupation.

With the initial petition, the Petitioner described his proposed endeavor as continuing working as a renewable transition energy attorney and research scholar. He contended that his endeavor has broad implications for addressing climate change, a U.S. government national priority. Furthermore, he argued that renewable energy will reduce fossil fuel emission and therefore a major source of air pollution that contributes to respiratory diseases, heart conditions, and premature deaths. He planned to counsel solar and wind farm developers in West Virginia in order to shift from fossil fuels and coal to "cleaner" forms of energy such as solar and wind. He stated that his role is invaluable because as an attorney, he can provide abstracting, due diligence, negotiation, contract drafting, and execution without; without legal counsel, large scale solar and wind farms cannot be established. Turning to the

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.
[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).
[3] The Petitioner submitted documentation of his U.S. law degree.
[4] The Director moreover determined that the Petitioner had not shown that he was well-positioned to advance the proposed endeavor or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer.

research portion of his endeavor, the Petitioner stated that his approach "goes beyond" typical legal research by using a systematic scoping review methodology to research the implementation of renewable energy laws and policies. Further, the Petitioner claimed that he has been published as a research scholar six times and that Canadian, U.S., and international health institutes have benefited from his work. He asserted that his research had been cited 48 times at the time of filing the petition. The record additionally includes the Petitioner's letter, offer letter from his current law firm, publications authored by the Petitioner, industry reports and articles regarding climate change, email exchanges, recommendation letters, independent expert opinions, a time sheet, a list of publications, a list of peer reviews he has conducted, and lists of citations of his work.

A letter from [redacted] praised the Petitioner's quantitative analysis skills and notes these are unique among attorneys. An expert opinion from [redacted] at the [redacted] confirmed the Petitioner's publications and peer reviews, noted that systematic scoping reviews are committed to the highest scientific standard, and expressed confidence that the Petitioner would use his unique knowledge to shape energy law and legal research in the United States. A letter from [redacted] described the Petitioner's role to lead research and advocacy efforts on drug policy reform in Ghana, specifically using scientific evidence and community action to persuade authorities to pass a new narcotics control law. [redacted] stated that given the Petitioner's prior success, his background and prior experience would translate perfectly to his new career in the energy sector. Letters from [redacted] and [redacted] highlight the Petitioner's strengths as a law student at [redacted] described a paper the Petitioner wrote as a law student regarding the commercialization and privatization of outer space, attested to the author's certainty that the paper would become a go-to guide for governments enacting space laws as well as private entities who wish to harness energy and natural resources in space. West Virginia House Delegate [redacted] wrote a letter stating that the Petitioner's findings will likely guide the Delegate and her colleagues to ensure they create appropriate solutions for energy justice issues.

In the decision denying the petition, the Director observed that the Petitioner's endeavor included both transactional legal work for clients and scholarly research on renewable energy, the former of which would take the majority of his time. The Petitioner had not provided objective independent evidence of how the legal services he intended to provide his clients would create national or global impact, nor how his legal advice would substantially impact the local and U.S economy. Further, the Director determined that the research portion of the Petitioner's endeavor would also not have national or global implications, or broader implications within his field. Although the Director acknowledged the expert opinions and support letters regarding the Petitioner's research methodology, they did not demonstrate that this particular methodology rose to the level of national importance or supported the Petitioner's statements that his skills were unique among attorneys. The Director noted that the Petitioner's past published research work was in the field of public health rather than on energy transition or climate change. Finally, while the Petitioner had submitted documents regarding sustainable energy transition, U.S. government initiatives on climate change, and West Virginia's economic and environmental outlook, these did not establish the national importance of the Petitioner's specific endeavor.

On appeal, the Petitioner disputes several conclusions in the Director's decision and renews his claims of eligibility for the national interest waiver, including the national importance of his proposed endeavor. He contends that the Director erred in focusing on the amount of time he spends on research and that the Director misunderstood the subject matter of his prior research, which dealt with public health law rather than public health. Moreover, he renews claims that his research methodology is unique, which the Director did not give appropriate weight to, and makes his research nationally important. The Petitioner argues he has provided probative and credible evidence on methodological rigor and innovativeness of his research approach and in support of his claim that his findings will influence U.S. law and policy. He also submits additional evidence regarding the research and legal fields, his updated peer review listings, and an updated research plan.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90.

Generally, the Petitioner claims his proposed endeavor has national importance because it will impact law and practice in the area of renewable transition energy. As a threshold matter, the Petitioner's arguments on appeal focus on the national importance of the *subject matter* of his endeavor, rather than of the endeavor itself. However, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* 26 I&N, at 889. While we agree with the Director that the Petitioner's endeavor has substantial merit, he has not corroborated his claim of its national importance. Specifically, he has not shown his endeavor has broader implications within the fields of law or renewable energy transition, as he claims.

Regarding the Petitioner's renewable transition energy research, the record does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his field or substantial positive economic effects for our nation that are indicative of its national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (a petitioner must support his assertions with relevant, probative, and credible evidence). The Petitioner's own statements that his work will significantly impact U.S. environmental law and practice are not independently corroborated. Although the Petitioner renews claims before the Director that his particular methodology of systematic scoping reviews are a superior form of evidence, he has not shown how *his particular research* has national importance.

In *Dhanasar*, the record was supported by probative expert letters regarding the U.S. strategic importance of the Petitioner's endeavor, as well as letters documenting the U.S. government interest and investment in his research. *Dhanasar* 26 I&N, at 893. On appeal, the Petitioner asserts that he has submitted the requisite independent, probative evidence and refers to several submissions made before the Director. For example, several professional associates attested to the rigor of the Petitioner's methodological approach and past efforts to engage in policy reform in his native Ghana. His law professors commented on the Petitioner's subject matter expertise, commitment to using his

skills, and general likelihood of future success. We also note the interest of a West Virginia elected official in utilizing the Petitioner's findings. As the Director noted, the record here indicates confidence on the part of the Petitioner's associates in his ability to impact future energy law or practice, but does not contain a probative basis for these assertions or offer specific detail about how this would be achieved.

The Director determined that the Petitioner had not shown that the impact of the legal work of his proposed endeavor would extend beyond the particular clients receiving his legal services. On appeal, the Petitioner contends that the Director appeared to conclude that legal work inherently lacks national importance.[5] The Petitioner additionally asserts that the first prong of the *Dhanasar* framework does not require him to show a record of past success or evidence from clients that depend on his work, as these are more related to the second prong, which shifts the focus from the endeavor to the Petitioner. The Petitioner is correct regarding *Dhanasar*'s second prong. But the Petitioner here has submitted evidence in support of his endeavor's purported potential prospective impact that largely focuses on his past successes as a predictor of future success. It is therefore appropriate to analyze whether this evidence demonstrates that he has shown the national importance of his proposed endeavor. We conclude that it does not.

Finally, the Petitioner asserts that his endeavor will have significant economic impact on cash investment and job creation in an economically depressed area. We do not dispute that West Virginia is an economically depressed area and that the Petitioner intends to work in that state. However, merely operating in a geographically depressed area is not sufficient to show national importance. The Petitioner additionally contends that his legal work will result in $1 billion to $3 billion annual investments but did not explain the basis for these projections.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed.

ORDER: The appeal is dismissed.

[5] In making these and other arguments, the Petitioner argues that the Director relied on the previously vacated precedent decision. *Matter of New York State Dep't of Transp.* ("*NYSDOT*"), 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998). However, the Director's decision does not cite this decision nor use its analysis and instead properly cites the *Dhanasar* requirements. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).