U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30644085

Date: APR. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an international business manager and consultant in the supply chain industry, seeks second preference immigrant classification (EB-2) as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director did not make a finding on whether the Petitioner qualified for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Petitioner claimed eligibility for both types of EB-2 classification, as a member of the professions with an advanced degree and as an individual of exceptional ability. The Director's decision focuses entirely on the issue of the national interest waiver and includes no determination on whether the Petitioner qualifies for EB-2 classification. Because we nevertheless conclude that the Petitioner has not established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

The Petitioner initially stated that his proposed endeavor is to "serve in development, consulting, and training pertaining to international Business Administration/management applied to international trade and investment focused on supply chain management and logistics." However, the Petitioner's initial filing did not provide additional details regarding his future endeavor and largely discussed the importance of the supply chain management and international trade in general.

In response to the Director's request for evidence (RFE), the Petitioner introduced a business plan for his company, [redacted] stating that the company's mission is to "facilitate the expansion and success of companies in international markets through high-quality strategic and operational consulting services" and to provide "innovative and customized solutions that drive growth, efficiency and sustainable competitiveness." The Petitioner provided additional articles on global supply chain challenges, trends and outlook on supply chain management, and the White House's 2022 report on securing critical supply chains.

Upon de novo review, we conclude that the Petitioner demonstrated substantial merit of his endeavor based on various industry reports and articles on the importance of supply chain management and logistics industry; however, the Petitioner did not establish national importance of his endeavor, as contemplated by *Dhanasar*. We agree with the Director's statement that the Petitioner "has not offered

[1] *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 is discretionary in nature).

sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance."

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact and focus on the specific endeavor that the foreign national proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. We stated that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *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 claims that "the evidence unequivocally supports the conclusion that [the Petitioner] satisfies the Dhanasar three prong test by a preponderance of evidence" and "the Director erred in concluding otherwise." Specifically, the Petitioner contends that the Director "did not analyze the Petitioner's evidence" such as the expert opinion letter, the business plan, and industry related articles and reports, and did not provide "in-depth consideration of [the] evidence" as it used "generic language in a templated request for evidence (RFE) and final decision."

While the Director did not specifically address each piece of evidence submitted, it is a well-established principle that "a presumption of regularity attaches to the actions of Government agencies" absent clear evidence to the contrary. *See U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001) (citing *United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926)). Here, the Director overall describes the Petitioner's proposed endeavor and cites to specific information and contents from the record before reaching its conclusion. If the Director provided 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 is it necessary for it to address every piece of evidence presented. *See Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009). Therefore, we find that the Director considered the evidence presented but determined that they are not probative in supporting the endeavor's national importance.

The Petitioner claims that the expert opinion letter "represents a critical endorsement of the Petitioner's work by an expert in the field" and affirms "the significance of the endeavor and its direct relevance to the national interest." However, this expert letter is written by an evaluator from INNOVA Educational Services, a private credential evaluation firm that analyzes foreign academic degree equivalence "due to [their] extensive knowledge of the world's educational systems." The evaluator does not provide his professional or academic credentials to show that he is a recognized expert in the field or industry of the Petitioner's endeavor, such as business administration, supply chain management, international trade, or logistics industry. Instead, the evaluator generally describes the three prongs of *Dhanasar* and summarizes the information already provided by the Petitioner's resume, business plan, and recommendation letters, such as his educational and employment background, the mission and vision of his company, and statistics and outlook on relevant occupations, before concluding that the Petitioner is eligible for the national interest waiver. The evaluator does not provide any other persuasive details regarding specific impact of the Petitioner's endeavor or his methodology in supply chain management or international trade.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l*, Inc., 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id*. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as the evaluator does not provide his credentials to demonstrate his expertise in the field of the Petitioner's endeavor or meaningfully address the details of the endeavor and why it would have national importance.

The Petitioner further claims that the business plan on record "serves as a comprehensive outline demonstrating the Petitioner's well-structured strategy and the viability of the proposed endeavor" as well as "the likelihood of business success" and "the potential for job creation within the United States." Although the Petitioner's business plan outlines the company's mission, organizational structure, marketing strategies, pricing, and weekly action plans, it does not sufficiently demonstrate the company's financial or staffing projections for us to determine how the Petitioner's business will have "substantial positive economic effects" to a region or the nation as a whole. *Dhanasar*, 26 I&N Dec. at 890. The Petitioner also has not offered other corroborating evidence of the company's economic impact aside from claims made in the business plan or his statements.[2] The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also contends that articles and publications discussing the proposed endeavor provide "external perspective and valuable insights into the endeavor's importance within the broader community, industry, or field" and the Director did not sufficiently explain "why he considers this evidence insufficient." We acknowledged that the Petitioner's endeavor assisting businesses in efficient transport of goods has substantial merit; but the relevant question for determining the endeavor's national importance is not the importance of the 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 Dec. at 889. The articles and publications on record do not address the Petitioner's specific endeavor and its impact; they merely demonstrate that the Petitioner will work in an important field and that is insufficient to establish the national importance of the proposed endeavor.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the Petitioner has not established his proposed endeavor in this case will sufficiently extend beyond his company's clients and employees to affect the region or nation more broadly. *Id.* at 893.

Accordingly, we conclude that the Petitioner did not establish national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and therefore, he has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are

[2] The Petitioner also claims that the Director unduly focused on the "intricate details of the Petitioner's business operations which may not be readily ascertainable during the initial stages of the endeavor." However, the Director's scrutiny of the business plan was for the purpose of finding corroborating evidence to evaluate whether the business will have any significant economic effects, as contemplated in *Dhanasar*.

dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs of *Dhanasar*. *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, he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.