U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32844984

Date: AUGUST 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a patent attorney, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish that 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 qualify for 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 demonstrates eligibility for the underlying EB-2 classification, 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, 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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

In his letter in response to the Director's request for evidence, the Petitioner states his proposed endeavor is to be self-employed as a patent attorney offering affordable services to innovators and small businesses in the United States.

The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

1. Substantial Merit

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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.* The Director determined the Petitioner established the substantial merit of his proposed endeavor. We agree.

2. National Importance

The Director concluded the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* 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. The Director determined the Petitioner did not establish that his proposed endeavor would extend beyond individual organizations and their clients to impact his field more broadly.

On appeal, the Petitioner asserts the Director misapplied this criterion, abused her discretion, and ignored the evidence he submitted. De novo review reveals no error in the Director's consideration of the relevant evidence and ultimate determination. When USCIS provides a reasoned consideration of the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *See Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *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); and *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009).

The Petitioner claims his proposed endeavor has national importance because it aligns with national initiatives of the United States Patent Office (USPTO) to encourage and strengthen innovation. Specifically, the Petitioner states he will serve with the USPTO Patent Pro Bono Initiative to provide legal services to inventors and small enterprises that cannot afford to hire patent attorneys. The Petitioner submitted general information concerning patents from the USPTO, a USPTO patent process overview, a USPTO All Technologies (Utility Patents) Report, USPTO publications on advancing innovation, intellectual property and the U.S. economy, USPTO initiatives, inclusive innovation, and the Patent Pro Bono Program for independent inventors and small businesses. The Petitioner also submitted information on patent legal requirements, and articles discussing prior art research, patents versus papers, the importance of independent inventors to America and America's economy, the demand for patent lawyers, protecting intellectual property, economic damage due to intellectual property theft, and USPTO expanding initiatives for under-resourced inventors and first-time filers.

These publications and articles attest to the importance of patents and the protection of intellectual property, but they do not address the Petitioner's specific proposed endeavor. Our assessment of national importance does not focus on the importance of a field or occupation in general, rather it "focuses on the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. Here, none of the publications or articles mention the Petitioner or address the potential prospective impact of his proposed endeavor. *See id.* (explaining we consider the proposed endeavor's potential prospective impact when assessing national importance). Consequently, the articles do not establish that his proposed endeavor would extend beyond his work for individual clients to impact patent law more broadly. *See id.* (explaining "we look for broader implications").

The Petitioner also claims his proposed endeavor will benefit the United States economy and lead to job creation. The Petitioner cites the USPTO Director's announcement of new programs that could quadruple the number of American inventors and increase the Gross Domestic Product (GDP) by about one trillion dollars. The Petitioner does not indicate that he would employ workers in the United States as he states he would be self-employed. The Petitioner also does not demonstrate how his work would extend beyond financial benefits to the individual clients he would serve to have other substantial positive economic effects commensurate with national importance. *See id.* at 890 (discussing significant potential to employ United States workers and other substantial positive economic effects as indicative of national importance).

The Petitioner asserts letters from prospective clients also attest to the national importance of his endeavor "as its effects span across different economic sectors and geographic locations, while potentially increasing small business revenues and their ability to hire more workers." C-B-[2] states the Petitioner helped his company file patent applications in the United States and other countries and the company intends to hire him to commercialize a patent which relates to the Drug Supply Chain Security Act (DSCSA). C-B- explains the Petitioner's work would help the company expand and employ more personnel in the United States. E-A- states his company's intent to hire the Petitioner to patent the company's software and protect its intellectual property, which would help the company

[2] We use initials to protect the privacy of the referenced individuals.

expand its business and enable it to hire more workers. U-B-A- explains his company intends to hire the Petitioner to patent-protect its software which would increase the company's revenue and expand its workforce. These letters attest to the benefits the Petitioner's work would bring to the authors' companies, but do not indicate that the Petitioner's proposed endeavor would impact his field more broadly in a manner commensurate with national importance. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

The Petitioner submitted evidence of three patents he obtained, which have been cited by other inventors and companies in the United States and other countries. The Petitioner explains that his patent for a [redacted] addresses problems like the toxic train derailment in Ohio and its effects on the surrounding communities. The Petitioner's patents reflect his significant achievements and qualifications and are relevant to the second *Dhanasar* prong, which addresses whether a petitioner is well-positioned to advance the proposed endeavor. However, the Petitioner's proposed endeavor is to work as a patent attorney to help clients secure patents, not to obtain patents for his own inventions. In *Dhanasar* we determined that 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. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clients to impact his field more broadly in a manner indicative of national importance.

C. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. 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) (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

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.