U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33379853

Date: AUG. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager, 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 the Petitioner was eligible for a national interest waiver of the job offer requirement. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.[1]

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

---

[1] The Petitioner's filing alternatively indicates that it is a motion to reconsider the decision or an appeal of the decision. However, the record is sufficient for us to take jurisdiction over the case as an appeal.

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Petitioner is a project manager who has worked on large-scale events, public works projects, and commercial and residential building projects. He holds a bachelor's degree in chemistry as well as an MBA. He has completed work within existing companies and acted as a CEO, commercial manager, and project manager, among other roles.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree.[3] However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that the record established that the proposed endeavor had substantial merit and that the Petitioner was well-positioned to advance the endeavor. However,

in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[3] The Petitioner initially asserted qualification for EB-2 classification based on exceptional ability, however the Director found him qualified due to his completion of an advanced degree. This determination is supported by the record.

the Director found that the national importance of the endeavor had not been demonstrated under prong one. The Director also determined that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that The Endeavor Has National Importance

On appeal, the Petitioner argues that the endeavor will have the required impact, it stands to advance project management methodologies with "innovative solutions to the market that are not currently available," particularly the Petitioner's budget management methodology. He contends that the Director "did not give due regard to the evidence in the record or apply the appropriate preponderance of the evidence standard," instead applying a stricter standard of review. He argues that the Director failed to adequately consider the submitted published materials, which were presented as support that the endeavor aligns with government initiatives. Similarly, he argues that the Director disregarded the submitted expert opinion letter.

The Petitioner also argues that the Director unduly limited the analysis by describing the endeavor as acting as a "project manager contractor for various companies in the construction industry." Rather, he contends that the endeavor was more detailed and original, as it focused on using innovative methodologies to optimize resources and digital tools to propose solutions; in addition, the Petitioner highlights his ability to combine different project management approaches with modern tools. He argues that the Director failed to consider that the proposed endeavor introduces improved manufacturing processes, one of the factors in deciding national importance outlined in *Dhanasar*. *Id.* at 890. In particular, the Petitioner highlights his use of digital solutions and intelligent urban construction models when applying his methodology.

In support of the endeavor's national importance, the Petitioner has submitted evidence including, but not limited to: an initial and updated professional plan; academic credentials, certificates, and training; evidence of prior work experience including schematics and details of construction projects; expert evaluations of his educational credentials; an expert evaluation of his eligibility for a national interest waiver; letters of support; letters of intent to retain his services; communications from industry recruiters; government communications including White House Fact sheets; and industry articles detailing the impact of project managers and the current state of the construction industry.

As an initial matter, the record does not demonstrate that the Director decided the case using an incorrect standard of review or imposed a heightened standard. The Petitioner does not articulate which standard the Director's decision erroneously applied or indicate with specificity why the decision reflects an adjudication by a standard different from the preponderance of the evidence. Rather, the Petitioner generally asserts that the submitted evidence was sufficient under this standard and that the Director should have granted the Petition. While the Petitioner may disagree with the Director's decision, this does not inherently show that the Director inherently misapplied the standard of review, and we do not see such a misapplication reflected in the decision.

With respect to the request for a national interest waiver, the Petitioner has not established that the proposed endeavor has a prospective potential impact rising to the level of national importance. The Petitioner's endeavor, as defined on appeal, is "to implement and disseminate an innovative

methodology aimed at preventing budgeting excess and optimizing resources in construction projects."[4] As part of this endeavor, the Petitioner intends to implement and refine his methodology and train other professionals to incorporate these practices, thereby reducing waste in the construction industry and making progress toward sustainability benchmarks nationwide.

Throughout the record, the Petitioner points to his background, education, experience in his field, and the complexity of his prior undertakings. The Petitioner's knowledge, skills, and experience in the field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor has national importance under *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

The Director determined, and we agree, that the proposed endeavor lacked the broader implications outlined in *Dhanasar*. *Id.* at 889. In particular, the Director highlighted that the proposed endeavor did not stand to sufficiently extend beyond the Petitioner's prospective clients, associates and partners such that it would have a national impact. While the individuals who would receive the Petitioner's project management services might find them valuable and beneficial, the Petitioner has not demonstrated how these impacts are nationally important. The Petitioner highlights the general impacts of the construction industry on the economy, in particular the need for affordable housing, and argues that the current industry is wasteful and not optimized. However, he has not demonstrated that his work has implications within his field as contemplated in *Dhanasar*. In *Dhanasar*, we highlighted examples of possible national implications at including improving human understanding and making advances in the field. *Id.* These or similar factors are not present in the Petitioner's proposed endeavor.

The Petitioner argues that his endeavor stands to improve manufacturing processes; while this is one factor highlighted by *Dhanasar*, we do not find the Petitioner's assertion to be supported by the record. Although he characterizes his process as "novel" or "innovative," the Petitioner has not established by a preponderance of the evidence that his methodology provides a new or unique approach that will lead to improved manufacturing processes. While the Petitioner asserts that he has reduced costs and waste in his prior projects, he has not adequately linked this reduction to a particular methodology. Notably, the Petitioner has highlighted different methodologies through the pendency of this case.

In the initial filing, the Petitioner indicated that he used various techniques including Project Management Body of Knowledge ("PMBOK") and Lean Six Sigma, in coordination with other construction management tools, for "efficient validation and management of technologies" and to

[4] The Petitioner's contention that the Director unduly limited the scope of the endeavor is not supported. The Director noted that the endeavor could be "summarized" as acting as a project manager, but also outlined the various ways the Petitioner had defined the endeavor; we note that the Petitioner's proposal has evolved through the pendency of the case. Initially, the Petitioner noted that he intended "to contribute to the U.S. economy as a Project Manager Specialist developing advanced solutions to improve infrastructure, smart structures, reduce waste material and reduce environmental impact;" the initial filing also reflected an intent to"provide a differentiated service concept" and apply a budget management methodology. The Petitioner later indicated that the endeavor was "to advance the American construction industry through the implementation and dissemination of my project management methodology" and "implement my innovative approach to project management." However, the Director fully considered the record evidence, and the Petitioner has not demonstrated the national importance of the endeavor under either formulation.

improve performance on various projects. The Petitioner indicated that he had developed an award-winning budget management methodology but did not provide details of what this method entailed. In response to the Director's request for evidence ("RFE"), the Petitioner provided an updated professional plan indicating that he would use different theories in combination: define, measure, analyze, improve, and control ("DMAIC"); plan, do, and check ("PDCA"); and intelligent urban construction models.

Because of the changing description of the methodology, we are limited in our ability to assess its potential prospective impact. Even if we were to credit a particular formulation, the Petitioner has not demonstrated that he has created a methodology likely to enhance or improve manufacturing processes. The Petitioner appears to have adopted existing parameters and tools into his work. For instance, the Petitioner notes that he has applied PMBOK, DMAIC, and PDCA methodologies in his projects; however, the Petitioner does not claim to have developed these methodologies, nor has he adequately explained how using a particular combination of methodologies is sufficient to constitute a manufacturing process improvement that is likely to broadly impact the U.S. construction sector.

The evidence does not otherwise reflect that the endeavor stands to improve human knowledge, further research outcomes, or contribute to scientific advancements in the United States or globally. *Id.* Finally, the Petitioner has not shown that the proposed endeavor would have "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area." *Id.* The Petitioner's economic arguments generally focus on a lack of affordable housing, the importance of reducing waste in the construction industry, and the difficulty in accessing project management in economically depressed areas. However, these arguments are not accompanied by evidence of the particularized economic impact that the endeavor would produce in these areas.

Because the documentation in the record does not establish the national importance of the proposed endeavor, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. *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 alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because he has not met the first prong of the *Dhanasar* analytical framework, we find that 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.