U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32457691

Date: AUG. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, 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 record 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 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,[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 their proposed endeavor; and

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Director found that the Petitioner, a civil engineer, qualifies as a member of the professions holding an advanced degree. After considering the Petitioner's response to the Director's request for evidence (RFE) to establish that the Petitioner satisfied the second and third prongs of the *Dhanasar* analytical frame work, the Director denied the petition, concluding that the Petitioner had not established that he was well positioned to advance the proposed endeavor, that, on balance, waiving the job offer requirement would benefit the United States, and that a favorable exercise of discretion in waiving the job requirement was warranted.[2]

The Petitioner's proposed endeavor, as described in the business plan, is to create a company that will "offer a diagnosis, construction, commissioning and consulting service for LOGISTIC STORAGE CENTERS of materials, supplies, raw materials, food, among others, to the community of [redacted] Florida." The Petitioner explained in this business plan that the object of this company "is to control the inventories of companies through a personalized diagnosis of the way in which an inventory, existence and stock management of products should be carried according to the needs of each company." The mission of the proposed endeavor is to provide these services "in a safe, timely manner… with the highest standards of technology and quality." The Petitioner's goal for this proposed endeavor is " [b]y 2028, to be the leading network of diagnosis, construction, commissioning advisory services for LOGISTIC STORAGE CENTERS of products, maintaining high standards of quality, technology and innovation … to the entire state of Florida."

On appeal, the Petitioner contends that the Director used "legally inappropriate standards for measuring whether [he] meets the Prong by a preponderance of the evidence" and, citing to *Love Korean Church v. Chertoff*, 549 F.3d 749 (9th Cir. 2008), argues that this "is a clear demonstration of an abuse of discretion." Specifically, the Petitioner asserts that the Director concluded that he had not shown that he "made significant contributions to the field of endeavor." The Petitioner continues, explaining that "[t]his language is identical to that which is found for the qualifying criteria for those who seek classification as an Alien of Extraordinary Ability under the El1 classification, wherein a Petitioner may prove their eligibility through the demonstration that they have made "Original Contributions of Major Significance,"" rather than the qualifying criteria under the classification sought. Upon review, the Director's decision does not include the referenced language. Rather, the Director determined that evidence in the record "failed to provide specific examples of how the petitioner's findings influence the field or industry beyond adding to the general pool of knowledge" and that the evidence did not establish that the Petitioner's qualifications "constitute a level of interest in his work from relevant parties."

The Petitioner further argues that the Director "clearly did not contemplate or discuss the totality of the evidence submitted for proving the Petitioner is well-positioned to advance the proposed

[2] Although the Director concluded that the Petitioner satisfied the first prong of *Dhanasar*, the decision found only that the Petitioner had established the proposed endeavor's substantial merit and did not discuss whether it was of national importance.

endeavor." He contends, first, that the Director's decision does not provide "specific commentary" on the evidence in the record, including that provided with his RFE response, and that this decision relies on issues not previously presented to the Petitioner. The Petitioner argues that the Director's failure to do so "served to the direct disadvantage of the Petitioner and manifests as a critical error in the adjudicatory process for this case." The record does not support the Petitioner's assertion. The Director's RFE relates specifically to the second and third prongs of the *Dhanasar* analytical framework, the grounds on which the Director denied the petition. In this RFE, the Director summarized the evidence initially submitted with the petition, discussed why it is insufficient, and then requested additional evidence to establish that the Petitioner satisfies these prongs. Accordingly, the RFE provided the Petitioner with notice of deficiencies in the record and afforded him an opportunity to address them. The Director's decision then considered evidence submitted both initially and with the Petitioner's RFE response when concluding that the Petitioner had not established that he was well positioned to advance the proposed endeavor, and 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, as required under the second and third prongs, respectively, of *Dhanasar*.

The Petitioner next cites to *Buletini v. INS*, 860 F. Supp. 1222, 1233 (E.D. Mi. 1994), noting that in that case, the court stated that the "failure to consider all of the relevant evidence submitted by a plaintiff constitutes an abuse of discretion." He contends that, as the Director did not contemplate all of the evidence submitted, USCIS' determination that the Petitioner did not meet the requirements of the second *Dhanasar* prong by a preponderance of the evidence is flawed amounting "to an abuse of discretion on the part of the adjudicator." However, the court in *Buletini* did not suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides 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 the petitioner presents. *See Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

Finally, the Petitioner asserts that, when considering the record in its entirety, he has demonstrated that he is well positioned to advance the proposed endeavor as required under the second prong of *Dhanasar*. Upon review of the record in its entirety, the Petitioner has not done so. While we do not discuss all of the evidence in the record, we have reviewed and considered all of it.

The second prong of *Dhanasar* 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner submitted a business plan for the proposed endeavor indicating that "an initial budget in dollars will be needed for the investment in the hiring of qualified personnel" and that it would hire 36 employees over two phases. The business plan does not offer detailed financial projections but concludes that "the investment of this expanding business model is profitable." The Petitioner also

provided letters from companies such as [redacted] expressing interest in purchasing construction services and an analysis of proposed construction projects from the Petitioner. However, this evidence does not show that the Petitioner's business plan for future activities, and progress towards achieving his company's goals rise to the level of rendering him well positioned to advance the proposed endeavor. Nor does the record reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that he is well positioned to advance his proposed company.

The record also includes, in relevant part, documentation of the Petitioner's previously completed construction contracts, his academic record, engineering license, and letters of recommendation. The recommendation letters discuss the Petitioner's role in past construction projects. For example, [redacted] a construction management professional, discusses the Petitioner's role as designer of and construction director for two temporary storage warehouses companies in the agricultural sector, stating that these warehouses "guarantee[d] the adequate temperature for the conservation of the products" and that the construction system "is durable and saves time due to its rapid manufacture." In another reference letter, [redacted] general manager and legal representative for an agricultural export company in Colombia, states that he contracted with the Petitioner for construction of an avocado storage and postharvest center and "verified the skills of…[the Petitioner] for the correct assembly of the metal structure and in general of the entire construction process," and that "work was delivered within the time, with the previously agreed specifications and budget." While these letters demonstrate the Petitioner's skill in designing and construction of storage warehouses, the record does not show that this past experience renders him well positioned to advance his proposed endeavor aimed at offering consulting services to logistics storage centers as described in the business plan.

Because the documentation in the record does not establish that the Petitioner is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning his eligibility under the first 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

As the Petitioner has not met the requisite second 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 for the above stated reason.

ORDER: The appeal is dismissed.