U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32384125

Date: AUG. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a scientist, 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 the Petitioner is eligible for a waiver of the job offer requirement 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

The Director determined that the Petitioner qualified as an advanced degree professional, and further concluded the Petitioner's proposed endeavor has substantial merit but did not sufficiently satisfy it is of national importance under *Dhanasar's* first prong. Based on our de novo review of the record, we conclude the Petitioner has not sufficiently demonstrated the substantial merit and the national importance of his proposed endeavor under the first prong. Specifically, we conclude that the Petitioner has submitted insufficient and inconsistent evidence regarding the substantive nature of his proposed endeavor. While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner provided in his petition that his proposed employment would be as a scientist, his worksite location would be in [redacted] Maryland, and his proposed job would be to research and develop advanced sensor technologies and new data-driven guidance to monitor heavy metal levels in water and commercial products. The [redacted] address provided in the petition is for a [redacted] office. In his initial cover letter, the Petitioner stated that the proposed endeavor would be to develop advanced sensor technologies and new cutting-edge, data-driven guidance for public health authorities and industry watchdogs conducting monitoring of heavy metal levels in water and commercial products to reduce the frequency and human and economic costs of heavy metal poisoning across industries such as food, agriculture and pharmaceuticals. The Petitioner submitted information about different types of metal found in baby food, and letters from fellow scientists, one who references the Petitioner's research on heavy metal contamination. In a separate statement, the Petitioner stated that his proposed endeavor would be to develop advanced sensor technologies and new cutting-edge, data-driven guidance for public health authorities and industry watchdogs conducting monitoring of heavy metal levels in water and commercial products. He mentioned he would pursue his proposed endeavor while earning his Ph.D. from [redacted] Illinois, he would then pursue a scientist position with the [redacted] and his planned research projects would include designing and fabricating interdigitated electrodes, microfluidic chips using laser and Dimatix printing, and synthesizing nanomaterial composite for the detection of nucleic acid, heavy metals, insecticides, and biomarkers of cancer diseases. Based on his initial submission, the Director issued a request for evidence (RFE). In the RFE, the Director determined that the proposed endeavor did not have national importance under the *Dhanasar* first prong.

In response to the RFE, the Petitioner submitted a brief in which he stated, "[w]hile the Request grants substantial merit to [the Petitioner's] research, it challenges the national importance of his proposed endeavor. Accordingly, [the Petitioner] has revised his proposed endeavor." The Petitioner then stated that his proposed endeavor would be to continue his investigation into the development of miniature electrochemical biosensors for the early detection of neurological diseases such as Alzheimer's disease and Parkinson's disease to improve public health. He mentioned that the miniature electrochemical biosensors are also applicable for the early detection of other acute diseases, metabolites in blood, heavy

metals in food or the environment, insecticides in agriculture, biosafety with biodefense, etc. His RFE response included lengthy information about Alzheimer's disease and Parkinson's disease. Next, he mentioned that he would pursue a position as a post-doctoral fellow upon completion of his Ph.D., and he would pursue a position with a biotechnology company called [redacted] located in [redacted] California.

In denying the Petitioner's national importance claim, the Director mentioned that he made a material change to his proposed endeavor in his RFE response, and cited to *Matter of Izzumi*, 22 I&N Dec. 169 (AAO 1998) (concluding a petitioner may not make a material change to a petition to make a deficient petition conform to service requirements). The Director stated that the Petitioner must establish eligibility based on the proposed endeavor from his initial statement.

On appeal, the Petitioner states that his updated statement clarified his ongoing research and concrete plans for fulfilling his proposed endeavor to develop advanced sensor techs and data-driven guidance to reduce heavy metal poisoning across industries. He asserts that he did not make an abrupt change of his overarching petition but a supplementary statement to address the Director's concerns regarding his proposed endeavor's national importance. He claims that his elaboration of the proposed endeavor's national importance is not a major deviation from his proposal to develop advanced sensor technologies and data-driven guidance for reducing heavy metal poisoning across industries.

In determining national importance, 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." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *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.

Here, the nature of the Petitioner's proposed endeavor is unclear. The Petitioner initially stated multiple times that his proposed endeavor is to develop advanced sensor technologies and new cutting-edge, data-driven guidance for public health authorities and industry watchdogs conducting monitoring of heavy metal levels in water and commercial products. He asserted that he would work at the [redacted] office in [redacted] Maryland, and he would work on other research projects. There was no mention that he would develop biosensors for the early detection of neurological diseases such as Alzheimer's disease and Parkinson's disease to improve public health. However, in response to the RFE the Petitioner admitted that he was revising his proposed endeavor. The new proposed endeavor would be to develop miniature electrochemical biosensors for the early detection of neurological diseases such as Alzheimer's disease and Parkinson's disease to improve public health. He then mentioned that the biosensors could be used for a myriad of other purposes, and that he would seek employment with a company, [redacted] upon completion of his post-doctorate fellowship.

The Petitioner's response significantly departed from the proposed endeavor he indicated in his initial filing. The initial proposed endeavor focused on developing technology to address heavy metal levels in water and commercial products. In the RFE response, the Petitioner transformed his proposed

endeavor to focus on developing technology for early detection of neurological diseases such as Alzheimer's disease and Parkinson's disease to improve public health. Additionally, he changed the proposed location for his endeavor from the [redacted] to a private company.

A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, at 176. The Petitioner's RFE response constituted a materially different proposed endeavor, with a different purpose and proposed location where the endeavor would be performed. The Petitioner's materially significant transformation rendered his proposed endeavor ill-defined and amorphous. The Petitioner's reversal introduced ambiguity into his proposed endeavor which prevented analysis into its substantial merit or national importance.

The *Dhanasar* framework cannot be applied to two dueling proposed endeavors. A petitioner must identify the specific endeavor they propose to undertake. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Therefore, it is not possible to determine the substantial merit and national importance of an endeavor when a Petitioner cannot consistently articulate the nature of the endeavor.

Because the Petitioner has not provided consistent information regarding his proposed endeavor, we cannot conclude that he meets the first prong of the *Dhanasar* analytical framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs of *Dhanasar's* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

ORDER: The appeal is dismissed.