U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33401378

Date: AUG. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 the Petitioner's eligibility for the requested national interest waiver. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

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
- 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 but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner did not demonstrate eligibility under the *Dhanasar* framework and will dismiss the appeal.

The first prong of the *Dhanasar* framework, 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The record reflects that the Petitioner intended to work as a senior drilling engineer/petroleum engineer in the United States, asserting that he would provide "highly specialized services to oil and gas companies operating in the United States." According to the Petitioner's professional plan, he intended to provide "operation and management services to companies supporting drilling operations within the [o]il, [d]rilling and [g]as [e]xtraction industry," and planned to specialize in wellbore stability analysis; drilling optimization and efficiency; well control and blowout prevention; drilling data analysis and interpretation; and performance evaluation and wellbore remediation. The Petitioner also planned to advise companies on "the latest technological advancements in directional drilling to improve and optimize gas and oil drilling operations in the United States [and] prevent spills." Ultimately, the Petitioner asserted that by prioritizing efficiency and embracing innovation, he would be able to contribute to a sustainable energy future. Additionally, he also proposed to conduct lectures, seminars, and workshops to teach his colleagues, peers, and other engineers in the industry on drilling best practices and directional drilling techniques. In support of his endeavor, the Petitioner provided two personal statements, a professional plan, an expert opinion letter, numerous letters of recommendation, and various articles and reports discussing the size, economic value, and importance of oil and gas industry.

Upon review of the record, the Director denied the petition, concluding, that the Petitioner did not establish either the substantial merit or national importance of his endeavor. Specifically, as it pertains to the national importance of his endeavor, the Director determined that the petitioner did not provide

[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).

evidence to establish his endeavor would result in the claimed broader impact to the oil and gas industry. And, while acknowledging the evidence in the record pertaining to the importance of the industry as well as the professional shortage in the industry, the Director determined that this evidence did not establish that the Petitioner's work stands to impact the field at a level commensurate with national importance.

On appeal, the Petitioner asserts the Director's decision was based on an incorrect application of law or policy and was arbitrary and capricious. In particular, the Petitioner claims the Director did not properly consider the arguments and evidence on record. Additionally, he points to the Director's single misstatement regarding the Petitioner's profession and field, asserting that it makes "it difficult . . . to determine whether the previous analysis and conclusions [in the Director's decision] referred to his petition." Yet, beyond this clear misstatement, the Director's decision does discuss the Petitioner's endeavor with specificity, including his claims regarding its national importance and impact to the oil, gas and energy fields. And, while we acknowledge the Director's error, because the record shows the Director addressed the Petitioner's specific proposed endeavor—not only in their decision, but also in their request for evidence (RFE)—we conclude that this error was not material to their decision, and is, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. at, 350 n.5 (citing *Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) (stating that error is harmless where there is no "reason to believe that . . . remand might lead to a different result" (citation omitted))). Moreover, on appeal the Petitioner does not establish that the evidence in the record shows that his *specific endeavor* is of national importance. It is not enough to generally assert errors in a decision. The Petitioner must also establish that they were prejudiced by any claimed errors. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *See e.g., Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)).

Turning to our review of the record, we disagree with the Director's conclusion regarding the substantial merit of the Petitioner's endeavor and withdraw this determination. The record contains sufficient documentation, including industry reports discussing the importance of the oil and gas industry, to establish the substantial merit of the Petitioner's endeavor. As such, we conclude that the record supports the substantial merit of his proposed endeavor. However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not demonstrate its national importance.

On appeal, the Petitioner continues to rely on the importance of the oil and gas field, but this misapplies the *Dhanasar* framework. When determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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, while the Petitioner claims on appeal that he will "play a pivotal role in boosting domestic production, which hinges on expanding drilling operations," he has not provided support for this broad

assertion. The Petitioner has not shown, for example, how his work would lead to national or global implications to the field, or otherwise impact domestic production beyond the contributions of a single professional in his field. And while he claims he has "knowledge and expertise to implement improved drilling techniques," he has not identified with specificity what techniques he would introduce or how they would be an improvement to those already widely used in the field. Without this information, we are unable to ascertain whether these techniques could be considered comparable to "improved manufacturing processes or medical advances" contemplated in *Dhanasar*. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

And, while we recognize that, in addition to improving the efficiency of drilling projects for his prospective employer(s) or customers, the Petitioner intended to provide lectures and seminars to train others in the field, he has not explained how these seminars, even if realized, would result in broader implications to his field. Just like the services he may offer to his direct employers, the benefits derived from his trainings are akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and not wider population. In *Dhanasar* we discussed how teaching would not necessarily impact the field more broadly in a manner which rises to national importance. *Dhanasar* at 893.

The Petitioner also contends that his endeavor is aligned with government initiatives to attract STEM talent. However, with respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.[2] While several proposed endeavors aimed at advancing STEM technologies and processes may have substantial merit, such activities, by themselves, generally are not indicative of an impact in the field of STEM more broadly. Here, as stated, the record does not establish the Petitioner's endeavor will result in broad implications to his field rather than providing his limited services working in a STEM profession.

Similarly, the testimonial evidence in the record, including the expert opinion letter and the letters of recommendation, provide little probative value in establishing the national importance of the Petitioner's endeavor. For instance, while Dr. D-P- discusses the Petitioner's "extensive experience," and benefits he can bring to his prospective employer(s), as well as the importance of the field generally, they do not establish that the Petitioner's *individual* work will result in broader implications to his field. Moreover, the expert opinion letter and letters of recommendation primarily discuss the Petitioner's expertise and professional background. We recognize that the Petitioner has had a successful career, but a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility.

[2] See generally 5 USCIS Policy Manual D.2, https://www.uscis.gov/policymanual.

Id., *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter and recommendation letters lack relevance with respect to the national importance of the Petitioner's proposed endeavor.

The record also does not demonstrate that the Petitioner's intended work in the oil and gas industry has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work (as opposed to the general oil and gas industry), the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

As the Petitioner has not met the requisite first 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. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *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).

ORDER: The appeal is dismissed.