U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33379257

Date: AUGUST 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial and refrigeration maintenance technician, 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 business plan, the Petitioner states he will work as an industrial and refrigeration maintenance technician to help businesses optimize operations and experience growth. He explains he will design and implement maintenance routines customized to the industry for a wide range of enterprises and will train and manage maintenance teams.

The Petitioner submitted evidence that he holds the equivalent of a United States bachelor's degree and over five years of progressive experience in his field. 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

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.

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 sufficiently extend beyond an organization and its clients to impact the industry or field more broadly.

On appeal, the Petitioner claims his proposed endeavor has national importance because he will work on energy efficient equipment protecting the environment, prevent polluting gases from spreading through the atmosphere, and replace equipment that uses polluting gases with environmentally friendly gases. The Petitioner explains that when he replaces polluting equipment with more energy efficient equipment, he "contributes to the entire Planet and the entire United States." We do not question the benefits of energy efficient equipment that the Petitioner will install and maintain. However, the Petitioner has not demonstrated that his work would extend beyond individual companies to impact the maintenance industry more broadly. *See id.* at 889 (explaining "we look for broader implications").

The Petitioner also claims he will create jobs and impact the United States economy. He states he intends to hire one part-time employee this year and employ up to three employees next year. He also describes his recent assembly of a cold storage facility located in a Hub Zone, a project which directly and indirectly employed 21 people. The Petitioner states his company "is located in a poor area" and he intends to generate technical jobs. The Petitioner did not submit evidence of his company's location in an economically depressed area. Even if he had submitted such evidence, the employment of one to three individuals does not demonstrate significant potential to employ United States workers. The Petitioner further claims that heating, ventilation and air conditioning (HVAC) significantly contribute to the U.S. economy and by ensuring efficient and reliable HVAC operations, he contributes to the functioning of essential facilities and services. The Petitioner did not submit documentation of cost-saving projections or other evidence that his work would have a substantial positive economic effect beyond reducing costs for individual companies. *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 that his proposed endeavor aligns with U.S. Government priorities because the HVAC industry is vital to the United States, new energy-efficient HVAC systems are replacing traditional HVAC systems, and clean energy is a priority of the Biden Administration. The Petitioner also claims his work will impact the well-being of U.S. citizens and U.S. healthcare by ensuring indoor air quality, and that he contributes to healthy diets of Americans because he works for large food companies that distribute their products to various American cities.

The Petitioner submitted articles and documentation on President Biden's Executive Order catalyzing America's clean energy economy through federal sustainability, President Biden's actions to spur clean energy manufacturing, a Department of Energy proposed rule on the energy conservation program, Seasonal Energy Efficiency Ratio (SEER) ratings, an Environmental Protection Agency proposed rule on the phasedown of hydrofluorocarbons, 2023 HVAC regulation changes, the worldwide HVAC industry, and refrigeration and food safety. This information attests to the importance of clean energy, the HVAC industry, and refrigeration and food safety. However, our assessment of national importance does not focus on the importance of issues affecting an industry or our nation in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner and they do not demonstrate the potential prospective impact of his proposed endeavor. *See id.* (explaining we consider the proposed endeavor's potential prospective impact when assessing national importance).

The Petitioner also asserts his proposed endeavor has national importance because he will work in the commercial facilities sector, which the U.S. Cybersecurity and Infrastructure Security Agency defines as protecting a diverse range of sites that draw large crowds of people for shopping, business, entertainment, or lodging. We do not discount the importance of HVAC and other equipment maintenance is commercial facilities. However, the Petitioner has not shown that his work would extend beyond servicing individual facilities to impact his field more broadly. *See id.* (explaining "we look for broader implications").

The Petitioner asserts he has more than 20 years of experience which will contribute to the overall success and competitiveness of U.S. businesses. The Petitioner submitted letters from employers and colleagues who praise his skills and experience, but do not address his proposed endeavor. For

example, M-C-[2] commends the Petitioner's "[d]eep knowledge of the maintenance area, especially in refrigeration" which "always brought options and solutions for different situations that happened inside restaurants." M-A-A-M- commends the Petitioner's work for his company and states he "is very relevant for [redacted] operators in the USA." A-C-W- describes the Petitioner as "an extremely competent, direct and ethical professional, in addition to his remarkable technical knowledge" and expresses confidence that the Petitioner will "contribute to the growth of American society." C-E-C- "highly recommend[s] [the Petitioner] for maintenance of electrical and air conditioning, as well as mechanical and hydraulic equipment" and states he is able to "add value, potentially servicing many companies – which would, in turn, result in positive contributions to American businesses and economy."

On appeal, the Petitioner submits a letter from L-E- who states his company relies on the Petitioner's essential services to maintain its refrigeration equipment. L-E- explains that the Petitioner has also suggested replacing the company's machinery "for equipment that does not generate environmental pollution and generate[s] efficient electricity savings." L-E- expresses confidence that the Petitioner "will contribute significantly to the United States of America and that his work should positively impact the American economy." These letters attest to the Petitioner's expertise and accomplishments and express confidence in the Petitioner's ability to succeed in the United States. The letters do not, however, address the Petitioner's proposed endeavor and are more relevant to the second *Dhanasar* prong in which we determine if a petitioner is well-positioned to advance their proposed endeavor.

The Petitioner also submitted a letter from A-A-, Adjunct Professor at [redacted] expressing his opinion that the Petitioner qualifies for a national interest waiver. A-A- claims the Petitioner's proposed endeavor has national importance because the Petitioner's skills are "essential to maintaining machinery and equipment at their utmost potential in order [for] U.S. companies to succeed." A-A- discusses how industrial production and manufacturing contribute to the economy and concludes that in "this context, [the Petitioner] would be contributing to U.S. companies' revenue and cost reduction, job creation, and the nation's infrastructure." A-A- does not explain, however, how the Petitioner's work would extend beyond his individual clients to impact his field more broadly on a level commensurate with national importance. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it related to U.S. strategic interests).

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. The Petitioner has not established that his proposed endeavor has significant potential to employ United States workers, would have other substantial positive economic effects, or would otherwise impact his field more broadly in a manner indicative of national importance.

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

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.