U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33399344

Date: AUG. 27, 2024

Appeal of Texas Service Center Decision

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

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

II. ANALYSIS

The first prong of the analysis for the national interest waiver relates to substantial merit and national importance of the specific proposed 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.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the Petitioner's proposed endeavor, working as a subsea engineer, has substantial merit, but the record does not show it has national importance.

The Petitioner intends to work for the [redacted] Texas maintaining safe, efficient, and reliable product and service delivery to customers in the oil and gas industry as a petroleum engineer. With a degree in mechanical engineering and more than ten years of experience as an engineer focusing in subsea engineering, he aims to install onesubsea, and other components by conducting research and directing crews in drilling operations.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner contends that the record demonstrates the importance of various technologies in subsea engineering to access offshore energy and has provided articles such as "Driving the future of energy from the seabed", "A Note from President Biden's Senior Advisor for Clean Energy Innovation and Implementation" and "Schlumberger 2021 Sustainability Report," the matter here is not whether these initiatives, as well as whether petroleum drilling is nationally important. Rather, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his services as a subsea engineer through [redacted] Texas. The Petitioner also points to the Biden Administration's report discussing the millions that will be invested in clean energy which will then "lower the costs for all Americans, create good jobs for workers and address cumulative impacts of pollution on disadvantaged communities," but the record does not indicate how his specific endeavor, separate from the work he is performing with [redacted] would accomplish these important goals.

Moreover, the Petitioner stresses his "expertise" and the "highly technical nature of the work." A letter from [redacted] discusses the "detailed and specific knowledge of Schlumberger safe operating procedures and experience in drilling operations." However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

Similarly, the Petitioner also asserts the submission of the professional letters of support discussed the impact of his work in the field. As noted by the Director, the letters provide nearly identical substantive information and while the letters detail the Petitioner's skills in subsea engineering, they

do not show the broader impact of the Petitioner's work. Moreover, the letters cover the Petitioner's prior work and accomplishments and relate more to the second prong rather than the first prong of the *Dhanasar* framework. *Id.* at 890.

Finally, the Petitioner did not show how his subsea engineering position in the [redacted] would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. While he makes general assertions regarding the importance of his work, the financial growth of [redacted] and the positive effect clean energy has on the economy, the Petitioner did not sufficiently explain or demonstrate how his particular proposed endeavor would have any projected U.S. economic impact or job creation. Without such evidence, the record does not show any benefits to the U.S. regional or national economy resulting from his services or position would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[2]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[2] *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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).