U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31283385

Date: AUG. 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is an entrepreneur who 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 (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner merited a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 USCIS may, as matter of discretion, 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.

USCIS' decision to grant or deny an NIW is discretionary in nature. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts of Appeals, as well as the Third Circuit in an unpublished decision).

II. ANALYSIS

A. Eligibility for the EB-2 Classification

The Director determined that the Petitioner was eligible for the EB-2 classification as a member of the professions holding an advanced degree based upon his degree and evidence of at least five years of progressive post-baccalaureate work in this field. Accordingly, the sole issue on appeal is whether the Petitioner merits an NIW of the EB-2 classification's job offer requirement as a matter of discretion. We agree with the Director's conclusion that he does not.

B. National Interest Waiver

The Petitioner characterizes the proposed entrepreneurial work as a general and operations manager. His proposed endeavor consists of opening a financial management consultancy office with a particular focus servicing financial institutions, hotels, and property management businesses.

We begin correcting a statement in the Petitioner's appeal brief in which he indicated the Director concluded he was well-positioned to advance the proposed endeavor under *Dhanasar's* second prong. A review of the Director's decision does not reveal any determination relating to that requirement.

1. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

The first prong, 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. *Dhanasar*, 26 I&N Dec. at 889.

When we evaluate national importance, the relevant question is not the importance of the industry or profession in which the foreign national will work. Rather, we focus on the "the specific endeavor that the foreign national proposes to undertake" and we look to evidence illustrating the "potential prospective impact" of his actual proposed work. *See Dhanasar*, 26 I&N Dec. at 889. A petitioner must demonstrate the proposed endeavor will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" (*Id.* at 889). Such endeavors may have "national or even global implications within a particular field" (*Id.* at 889), "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area, for instance" (*Id.* at 890), or has the potential to widely advance and broadly affect U.S. strategic interests (*Id.* at 892).

The Petitioner's sole appellate argument under this requirement is that the Director mistakenly concluded that the proposed endeavor's location would not be in an economically depressed area. In the denial decision, the Director stated the endeavor would not be located in an economically depressed

area. While the Director was technically correct that the area is not designated as economically depressed, evidence in the record reflects it is economically *distressed.* We note the projections indicate the endeavor would create four jobs in this economically distressed area. But within the appeal, the Petitioner does not explain how or why a nominal number of jobs in a county of more than 18,000 residents would impact the field more broadly or would have significant potential to employ U.S. workers or have other substantial positive economic effects in the area. The Petitioner's appellate arguments under *Dhanasar's* first prong are inadequate to demonstrate his endeavor has national importance.

2. We Reserve *Dhanasar's* Remaining Second and Third Prongs

As we explain above, *Dhanasar's* second and third prongs require the Petitioner to demonstrate he is eligible for an NIW meeting additional requirements. But because the Petitioner has not established that his proposed endeavor satisfies the *Dhanasar* framework's first prong, he is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

3. Discretionary Element

As a final issue, the Petitioner's arguments do not persuade us that when the Director denied the petition, they erred by not identifying each positive and negative factor and then explaining the weight given to each factor. The agency policy the Petitioner references in his appeal relates to benefit requests denied solely as a matter of discretion. But that is not the situation before us because the Director only found the Petitioner met the EB-2 requirements, then concluded he did not satisfy *Dhanasar's* first or third prongs. In doing so, the Director did not deny the NIW petition *solely* as a matter of discretion, but instead denied it for not meeting *Dhanasar's* requirements. As a result, neither the law nor policy required the Director to perform the type of discretionary analysis the Petitioner proposes.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.