U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33689551

Date: AUGUST 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer and entrepreneur, 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 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:

- The proposed endeavor has both substantial merit and national importance;

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 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 Petitioner submitted a business plan for [redacted] a limited liability company which would provide construction management and engineering consulting services. The business plan states the Petitioner will be a partner in the company which will focus on building and project costs reduction, increasing competitiveness of U.S. companies, and providing affordable housing to U.S. citizens and the best returns to U.S. developers.

The Petitioner submitted evidence that he holds the equivalent of a U.S. bachelor's degree in civil engineering and has over five years of progressive experience in civil engineering and construction. He thus qualifies for EB-2 classification as a member of the professions holding an advanced degree pursuant to the regulation at 8 C.F.R. § 204.5 (k)(2). 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 Petitioner's business plan and articles he submitted on civil engineering and the construction industry demonstrate that his proposed endeavor has substantial merit.

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 have a broader impact on his field rising to the level of national importance.

On appeal, the Petitioner claims the Director erred and his proposed endeavor has the potential to significantly contribute to the U.S. economy through job creation and economic impact, as shown by his business plan. The Petitioner's business plan projects that his company would employ 13 individuals in the first year, increasing to 167 in the fifth year. This staffing plan does not indicate significant potential to employ United States workers in an industry that the business plan states employs more than 9 million people. The business plan projects that the company will earn net income of -$12,131 the first year, increasing to $1,163,845 in the fifth year and will pay $2,364,559 in taxes during the first five years. The business plan does not explain how these projections were made and does not establish that the company's income and tax payments would have a substantial positive economic effect in the construction sector which the business plan states has an estimated total revenue

of 1.9 trillion dollars. *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 also claims his proposed endeavor has national importance because the construction sector is one of the most important industries in the United States and immigrant entrepreneurs significantly contribute to the U.S. economy. The Petitioner submitted articles on civil and industrial engineers, engineering skills shortage, 2021 engineering and construction industry outlook, construction in the United States, immigrant entrepreneurs driving economic growth, the importance of entrepreneurship, immigrant-owned businesses employed eight million Americans, and immigrants as economic contributors. These articles discuss the importance of civil engineers, the construction industry and immigrant entrepreneurs. However, our assessment of national importance does not focus on the importance of issues affecting an occupation, 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.* at 889 (explaining we consider the proposed endeavor's potential prospective impact when assessing national importance).

The Petitioner asserts the Director disregarded his letters of recommendation, which support his eligibility. The Petitioner submitted letters from employers and colleagues who praise his work and skills, but do not discuss his proposed endeavor. For example, G-A-F-A-[2] commends the Petitioner's accomplishments at [redacted] and describes him as "one of the most well-trained and competent professionals." R-N- states the Petitioner exceeded his company's expectations "and those of [its] clients by achieving better results (cost, deadline, quality and final product) in the construction work." A-V- recounts that the Petitioner "obtained results beyond expectations and demonstrated his technical skills and experience" on projects that resulted in his client's full satisfaction. R-N- commends the Petitioner's work for his company and expresses confidence in the Petitioner's "remarkable future contributions to the United States of America." W-N- states the Petitioner's "expertise in the construction industry has been critical to our success, and I believe he will be an asset to any team he joins." These letters attest to the Petitioner's experience and accomplishments, but do not address his proposed endeavor and are more relevant to the second *Dhanasar* prong in which we consider whether a petitioner is well positioned to advance the 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- states that the Petitioner's proposed endeavor has national importance because he can assist U.S. companies doing business or planning to do business in Brazil and Latin America. However, the Petitioner's business plan does not discuss providing services to U.S. companies conducting business in Brazil and Latin America. Moreover, while he discusses some U.S. companies that have worked in Brazil, A-A- does not specify how the Petitioner's work for individual U.S. companies would extend beyond specific projects to impact the construction industry more broadly in a manner 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).

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

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 company's 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 on a level indicative of national importance.

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.