U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32430126

Date: AUG. 30, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an industrial production manager and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 Nebraska Service Center denied the petition, concluding that the record establishes that the Petitioner qualifies as an individual of exceptional ability but does not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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. *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,[3] 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.

Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

A. EB-2 Classification

The Petitioner is an industrial manager and entrepreneur in the lighting fixture industry. The Director concluded that the Petitioner qualifies as an individual of exceptional ability by meeting three of the six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) The Director concluded that the Petitioner provided evidence of the following: an official academic record showing he has a degree in the area of exceptional ability, letters from employers evidencing ten years of full-time experience in the occupation, and proof of a license to practice the profession; meeting the criteria set forth in 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C). After analyzing the evidence as it pertains to the criteria, the Director should have then provided a final merits determination, however this was not done. However, as the record does not otherwise establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[4]

B. National Interest Waiver

1. Substantial Merit

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. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner states that his proposed endeavor is to be the industrial production manager

[3] *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).

[4] *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 an applicant is otherwise ineligible).

of his own company that will manufacture and sell industrial, residential, and decorative lighting. The Petitioner asserts that his company will advance U.S. business, technology, and science. The record includes information on the manufacturing and wholesale industries in the United States. We conclude that the proposed endeavor has substantial merit.

2. National Importance

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erroneously applying the law. He asserts the Director did not give "due regard" to the evidence submitted, specifically: the resume outlining his experience; the business plan describing his credentials, expertise, and accomplishments; evidence of his work in the field; letters of recommendation; and industry reports and articles demonstrating the national importance of the proposed endeavor and the shortage of professionals in the field. Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did not demonstrate that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner contends that his proposed endeavor has the potential to significantly contribute to the U.S. economy through job creation and economic impact. The business plan projects that the proposed endeavor will create 43 direct jobs by the company's 5th year of operation, along with earning $12.3 million in revenue in those first 5 years[5]. The jobs the proposed endeavor will create include full-time, part-time, and contractor jobs. He intends to establish his headquarters in California; in a HUBZone and then plans to expand his business to Florida and Massachusetts HUBZones within the first five years of operation. *Dhanasar* states, "[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, the record does not establish that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation as the record does not establish his company's future staffing levels and business activity stand to provide substantial economic benefits in California, Florida, and Massachusetts, or the United States. Specifically, the record does not support that the direct creation of 40 additional full-time jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

In addition, the record emphasizes that the Petitioner's business will be established in HUBZones, "[t]o generate jobs for U.S. workers in these underserved areas, while at the same time offering them opportunities to build up and expand their professional possibilities. This will improve wages and working conditions for American citizens and boost investment and economic development throughout such local communities." However, the Petitioner has not offered sufficient evidence that his business will be located in a HUBZone. Further, he did not indicate that his endeavor would participate in the HUBZone program or that it would be eligible to do so. While it appears that the

[5] We note the definitive statement asserts that the proposed endeavor will create 38 jobs, however we do not believe this contradiction changes the analysis.

Petitioner may have intended to equate a designated HUBZone with an "economically depressed area," the record does not support a conclusion that this is an equitable comparison. The Petitioner has not otherwise claimed or provided evidence that the area where his company will operate is economically depressed, that it would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue. While his intentions are meritorious, the Petitioner has not provided corroborating evidence to support these claims. The Petitioner's claims of his proposed endeavor's economic impact have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide these benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376.

The Petitioner contends that his proposed endeavor will, "[g]enerate substantial ripple effects upon key commercial and business activities. . . ." *Dhanasar* states that a proposed endeavor may have national importance because it has "national or even global implications within a particular field, such as certain improved manufacturing processes or medical advances." *Dhanasar,* 26 I&N Dec. 889. Here, the record does not specify any "ripple effects" that would be directly attributable to his endeavor or elaborate on how the endeavor will cause such effects, beyond operating as a business manufacturing lighting fixtures. The Petitioner contends in his definitive statement, "[o]ur services will improve efficiency and productivity for our clients, allowing them to reinvest savings in additional projects, creating innumerable direct and indirect jobs, resulting in a positive ripple effect on the U.S. economy." However, the record does not further detail how it will improve efficiencies and productivities and how its services will cause these ripple effects.

In addition, the Petitioner asserts his proposed endeavor will broadly impact the manufacturing industry. On appeal, he states this is "demonstrated by the submitted Industry Reports and Articles. . . given the significant impact of the role that manufacturing plays in modern economies." The Petitioner states that his work, "[w]ill contribute access to innovation, new business practices, economic prosperity, and overall enhanced societal welfare; it will also generate American jobs, increase national and international integration and productivity, and enhance revenue for the U.S. economy at large." However, the record does not specify any innovation, new business practices, or enhanced societal welfare that would be directly attributable to the Petitioner's proposed endeavor. The Petitioner's intentions alone do not constitute evidence as a petitioner must support assertions with relevant, probative, and credible evidence. *Matter of Chawathe,* 25 I&N Dec. at 376.

For example, both the appeal and the expert opinion letter speak of the lighting industry going toward using more sustainable and recyclable materials. However, other than these statements, the record does not show that the Petitioner intends to specifically work with these materials or has contributed to the innovation or advancement of these methods, which may demonstrate a broader impact on the industry. Without evidence of a broader impact, the record demonstrates that the impact of the Petitioner's proposed endeavor would be limited to his direct clients and would therefore not rise to the level of national importance. 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. *Dhanasar*, 26 I&N Dec. at 893. Here too, his company may have an impact to his direct clients, however that does not constitute national importance as set forth in the *Dhanasar* framework.

Finally, the Petitioner asserts on appeal that his proposed endeavor is of national importance because of the importance of entrepreneurship, immigrants, and small businesses to the economy of the United States. While we acknowledge their collective impact, this does not further a claim that the Petitioner's specific proposed endeavor will have a broader impact to the field of manufacturing. The record also contains an expert opinion letter that speaks to the proposed endeavor's impact; however, it restates many of the same claims already addressed above, speaking broadly of the manufacturing industry, small businesses, and entrepreneurship. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.