U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34873924

Date: DEC. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established 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. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

We set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) that on

[1] *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

In the initial filing, the Petitioner stated that his proposed endeavor is to "continue working as a Sales Manager at [redacted] In said role, he will "provide services to various U.S. logistics companies in the areas of pre-sale consulting management, sales support management, strategy optimization studies, and operational support management." By doing so, he contends he will "make a difference in the supply chain process, which affects shipping and manufacturing and thus will positively affect the economy due to better efficiency."

The Director issued a request for evidence in which they requested, in part, additional evidence to establish that the Petitioner's proposed endeavor had national importance, noting that the Petitioner has "not shown his proposed endeavor in this case stands to sufficiently extend beyond [redacted] and its clients to impact the industry or field more broadly." The Director also noted that the Petitioner had not shown that the benefits to the regional or national economy resulting from his proposed endeavor would reach the level of "substantial economic effects" contemplated by *Dhanasar*.

In response to the request for evidence, the Petitioner provided an updated personal statement reiterating his proposed endeavor in the United States. The Petitioner also submitted recommendation letters, evidence of interviews with prospective employers, and articles and reports about supply chain

management and logistics. The Petitioner did not provide further detail on the specific prospective occupation or proposed endeavor that he would focus on to illustrate the nature of the work that he would perform during his day-to-day work activities. Nor did the Petitioner provide a detailed description explaining the manner through which he would prospectively deliver these services, supported by documentary evidence.

The Director denied the petition, concluding that the record did not establish that the Petitioner qualified for a national interest waiver because he did not meet the first prong of the *Dhanasar* framework, finding that while the Petitioner had established substantial merit, he had not offered sufficient information and evidence to demonstrate that the prospective benefit of his proposed endeavor rose to the level of national importance.

We adopt and affirm the Director's finding. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner submits a brief highlighting the evidence he submitted in support of his petition and in response to the Director's request for evidence and maintains that he has demonstrated the proposed endeavor's national importance. While we do not discuss every piece of evidence individually, we have reviewed the record and have considered the Petitioner's eligibility for the national interest waiver. The Petitioner's general objections on appeal regarding his eligibility for the EB-2 classification are insufficient to overcome the conclusions the Director reached based on the evidence submitted by the Petitioner. The Petitioner has not articulated on appeal how the Director erred in finding that the record did not demonstrate the proposed endeavor has national importance. While the evidence of record indicates that the Petitioner has extensive experience, the record does not include a plan or other indication of how the Petitioner's endeavor to "continue working as a Sales Manager at [redacted] will impact business at the level of national importance contemplated under the first prong of the *Dhanasar* framework. The Petitioner has not established on appeal that his intent to apply his knowledge to the company and its clients is an activity that will have a broad impact.

As for the Petitioner's assertions on appeal that his endeavor will "contribute to the overall economic health and prosperity of the United States" by "enhancing the ability of U.S. companies to compete globally" and will improve "the supply chain process, which will positively affect the economy through increased efficiency," he has not established on appeal that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. *See Id.* at 890. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's pursuits would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Id.* The record does not offer evidence sufficient to translate *how* the Petitioner's proposed endeavor of providing "pre-sale consulting management, sales support management, strategy optimization studies, and operational support management" stands to sufficiently impact U.S. interests or the relevant sector more broadly at a level commensurate with national importance.

As previously mentioned, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not demonstrated that his undertaking has implications beyond the companies and clients he elects to work with to impact the U.S. economy on a broad scale rising 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. *Id.* at 893. Similarly, the record here does not establish that the Petitioner's proposed endeavor's impact will be nationally important.

The Petitioner also reiterates on appeal that he has been successfully providing the services that constitute the proposed endeavor. The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that his specific endeavor has national importance under *Dhanasar's* first prong. Moreover, although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's professional experience is generally material to *Dhanasar*'s second prong—whether an individual is well positioned to advance a proposed endeavor—but they are generally immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.