U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35491366

Date: DEC. 18, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a semiconductor equipment 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 Nebraska Service Center denied the petition, concluding that the record 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.

The Director determined that, despite qualifying for the underlying EB-2 classification as a member of the professions holding an advanced degree, the Petitioner did not establish he is eligible for, and merits as a matter of discretion, a national interest waiver. Applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director determined the Petitioner did not sufficiently identify his proposed endeavor and, ultimately, concluded that the Petitioner: (1) did not establish that his endeavor has substantial merit and national importance, (2) did not demonstrate that he is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States.

On appeal, the Petitioner does not specifically address the Director's grounds for denial, and instead, reiterates the same language that was provided to the Director regarding his proposed endeavor, submits copies of evidence already included in the record, and submits a new expert opinion letter. Regarding the new expert opinion letter, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable

opportunity to provide it for the record before the denial"). Although the Petitioner generally asserts his belief that he qualifies for the requested classification under the preponderance of the evidence standard and that he does "not think all factors in the Petitioner's I-140 were considered by" U.S. Citizenship and Immigration Services (USCIS), he does not point to specific examples of where or how the Director failed to adequately consider his evidence.

In our review of the record, we conclude that the Director thoroughly reviewed, discussed, and analyzed the record, and we concur with their conclusion. As the Director noted, the Petitioner's description of his proposed endeavor was vague. With his business plan and statements, the Petitioner stated that his proposed endeavor as a semiconductor equipment engineer, "is operation, maintenance of semiconductor manufacturing facilities and equipment in the United States with various aspects, from procuring manufacturing facilities and the equipment, overseeing and operating the facilities and the equipment, maintaining and servicing the equipment to strategically handle[] production planning and capacity, etc." Even though the record was supplemented via the Petitioner's response to the Director's request for evidence (RFE), we sill have little additional idea of what the Petitioner is actually proposing to do, or how he would carry out his proposed endeavor.

Although the Petitioner provided extensive documentation regarding the various aspects of the semiconductor industry, his prior work in the field, and various articles regarding the national importance of the semiconductor industry, the record lacks detailed evidence regarding the Petitioner's planned projects or any other meaningful information about his endeavor. Simply showing that he is working in an important field is insufficient to establish his proposed endeavor's national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889 (stating that the first prong's focus is on "the specific endeavor that the foreign national proposes to undertake").

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.[1]

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.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).