U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35206465

Date: DEC. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an architect, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for a national interest waiver. 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.

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." *Id.* 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,[1] 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as an advanced degree professional. The remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner initially stated that he intended to work in the field of architecture in the United States to create environmentally sustainable and aesthetically pleasing buildings, including residential housing. He provided the following summary of his proposed endeavor:

> I will build landmarks, monuments, and cultural institutions that are feats of design and engineering that will have an everlasting, deeply impactful effect on America's culture and economy.
>
> . . .
>
> Given [the] grave housing crisis in the United States, my proposed endeavor—informed by all that I have achieved in Azerbaijan in function and scale—shall be an incredible boon to the people of the United States—and is of utmost national importance, as my talent will allow me to build housing projects of immense function and scale, and this work will make a significant impact in alleviating the deeply detrimental housing shortage crisis in the United States.

Although the Director determined that the Petitioner's proposed endeavor has substantial merit, the Director concluded the record did not establish that the endeavor is of national importance. On appeal, the Petitioner reiterates his explanation of the national importance of his endeavor, asserting that the Director erred in evaluating the submitted evidence. Upon review, for the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his endeavor in order to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

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

[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 to be discretionary in nature).

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.

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. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. *Id.* at 889.

The Petitioner provided reports and articles discussing White House initiatives concerning the STEM fields (science, technology, engineering, and mathematics), immigration, the construction industry, and the impact of commercial real estate on the economy. This material, however, does not provide sufficient insight into any specific plans that the Petitioner has concerning his intent to work as an architect in the United States. While this documentation relates to the area in which the Petitioner intends to work, it does not speak to how the Petitioner's individual endeavor to design or oversee housing developments or other construction projects would have a potential prospective impact of national importance. And although the Petitioner also offered documentation concerning architecture he has designed and developed, his professional experience does not provide insight into any specific proposed endeavor envisioned by the Petitioner beyond that of continuing his work in his field.

The Petitioner also submitted an expert opinion letter and letters of support discussing his skills, knowledge, and accomplishments. The expert opinion letter expresses confidence in the Petitioner's abilities and cites his commitment to improving the lives of residents in rural and urban communities, stating that the Petitioner "aims to revolutionize the industry by introducing innovative and sustainable design practices prioritizing safety, functionality, and aesthetic appeal"; the letter does not, however, provide details concerning innovative design practices or explain their potential function within the Petitioner's proposed endeavor. Similarly, a letter of support from a previous client praises the Petitioner's work on various projects, referring to his work on a mansion as "defying geographical limitations and challenging architectural norms," but the author does not elaborate on this observation. Another letter of support from an individual who specializes in glass facades conveys admiration for a difficult project developed by the Petitioner involving the application of thousands of glass panels, but the author does not provide specific information concerning the Petitioner's proposed endeavor. Although these and other letters of support laude the Petitioner's work and character, they do not illuminate any definitive endeavor he intends to pursue in the United States. We note that the Petitioner also provided letters from developers in the United States interested in hiring him, but these letters do not detail projects utilizing the Petitioner's services or explain how any such projects would be of national importance.

We further note that the expert opinion letter refers to the Petitioner's "reputation as one of the world's most respected and sought-after architects" who has "extensive experience and expertise in designing

and constructing structures," and the letters of support express interest in investing in his future projects in the United States. However, evidence of work experience and investment interest generally relates not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second,[2] which evaluates whether an individual is well positioned to advance an endeavor. As such, these letters do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

In response to a request for evidence, the Petitioner clarified that he intended to shift the operations of his existing architecture firm in Azerbaijan to the United States; he explained that working through his firm would be the vehicle by which he would accomplish his "proposed endeavor of benefiting the business, construction and economy fields of the United States." While we recognize that the Petitioner's general intention to contribute to the economy and address housing needs is an endeavor of substantial merit, he has not detailed how his single architecture firm would specifically impact purported nationwide shortages in housing or in the construction industry. Again, it is not the overall importance of the industry or field in which the Petitioner intends to work, but the specific endeavor on which the Petitioner intends to embark that we consider in evaluating whether it is of national importance. Although an endeavor that is shown to have significant potential to broadly enhance societal welfare may be considered to have national importance,[3] here, the Petitioner has described worthy but broad ambitions without identifying or defining his specific endeavor beyond that of an intention to create useful and high-caliber projects through the work of his firm—a single business that would operate as one of tens of thousands in the United States. The Petitioner has not provided evidence of how, for example, his firm's development of a building that would serve as a residence for its tenants would constitute an endeavor of national importance.

Concerning the purported economic impact of the Petitioner's business, while his statements generally speculate that his firm would create jobs in the United States, he did not provide independent evidence or otherwise explain how his business would create jobs at a level that would have a significant impact on a given region or have a prospective national impact on a specific field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The record does not include a plan or other indication of how the Petitioner would operate a business that would, as he claims, impact the economy at the level of national importance contemplated under the first prong of the *Dhanasar* framework.

The Petitioner has not specifically described how he would undertake an endeavor of a scale that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. While the Petitioner has described in broad terms the services he intends to provide, he has not explained how his individual company would have a national-level impact to—as described in one of his stated main goals—"build and improve housing in the United States."

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility

[2] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

[3] *See* 6 USCIS Policy Manual F.5(D)(1).

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 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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.