U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29137084

Date: FEB. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a specialist in the area of international capital markets and private equity financing, 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 the Petitioner established his eligibility for the EB-2 classification as a member of the professions holding an advanced degree, but that the record did not establish that he merited a national interest waiver as a matter of discretion. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner is a specialist in the field of private equity and foreign investments, and states that he proposes to continue these activities in the United States through companies he has co-founded. He initially stated that his specific endeavor involved his role as executive vice president, capital markets for two [redacted]-based companies, one involved in oil and gas exploration and the other in real estate investment in the small and medium multi-family housing market. The Petitioner further explained that his role "will be focused on discussing and negotiating equity funding opportunities with major foreign investors." However, in responding to the Director's request for evidence (RFE), the Petitioner submitted evidence of a new company that he formed well after the filing of the petition, and did not indicate that his proposed endeavor continues to involve the two companies mentioned in his initial submission.

In his decision, the Director determined that the Petitioner's focus on the new company represented an impermissible material change to the petition. A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). The Director also noted that eligibility for a petition must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

On appeal, the Petitioner argues that his creation of a new company (without clarifying the status of the companies initially mentioned as the focus of his proposed endeavor) was not a material change or a new set of facts that could not establish eligibility at the filing date, as the new company was just a new vehicle to pursue the oil and gas projects proposed through the initial company. A review of the three business proposals submitted with the RFE response shows that the first (Fund 1) does appear to involve the same oil and gas project described in the proposal submitted initially, while the other two proposals submitted with the RFE response involve oil and gas projects that are not mentioned in the initial proposal.

Our review under the first prong of the *Dhanasar* analytical framework is focused on the specific endeavor that is proposed by a petitioner. While the Petitioner on appeal asserts that his endeavor is "promoting foreign investment," or "International Capital Markets and Private-Equity [*sic*] Financing," these broad fields lack the specificity required of a proposed endeavor under *Dhanasar*. Also, his arguments regarding the first prong of the framework (in his response to the Director's RFE and repeated verbatim on appeal) depend heavily on the economic impacts of these specific oil and

[1] *See also 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).

gas projects. Since the analysis of whether a proposed endeavor has substantial merit and national importance depends in large part upon the scope and impact of the endeavor, the details of the endeavor and how it is proposed to be executed are material to a petitioner's eligibility for a national interest waiver. The latter two projects were not part of the initial proposed endeavor and were formed well after filing, so because of this material change we agree with the Director that the evidence about these projects cannot be considered on appeal.[2]

A. Substantial Merit and National Importance

As noted above, the first prong of the *Dhanasar* analytical framework, which considers 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

Our evaluation of the national importance of a petitioner's proposed endeavor also considers its broader implications. *Id.* Here, the Director concluded that the evidence did not establish that the benefits and impact of the Petitioner's proposed endeavor would extend beyond the contractors and clients served, and thus would not impact the private equity field, or the oil and gas field, more broadly. In addition, applying factors from our precedent decision, the Director determined that the proposed endeavor in this case had not been show to offer significant potential to employ U.S. workers or other substantial positive economic effects.

On appeal, the Petitioner asserts that the United States would benefit from the development of untapped oil and gas resources, that the value of the projects for which he proposes to attain funding would reach billions of dollars, and that industries across several states would be involved in the projects, creating "a large number of jobs." In support of this statement, he refers to information from the website of the U.S. Department of Energy (DOE) that provides statistics on the economic impact of the oil and gas industry in the United States. But since our analysis is focused on the Petitioner's specific proposed endeavor, data and statistics about the broader oil and gas industry in the United States do not help to establish the national importance of that endeavor.

In the same vein, the Petitioner also focuses on the national importance of the field of "International Capital Markets and Private-Equity Financing," which as noted above he describes as his proposed endeavor, and refers to several articles about private equity and cross-border investments in the record. Again, these do not demonstrate the national importance of his specific endeavor, but instead describe

[2] The Petitioner asserts on appeal, as he did in response to the RFE, that he "has been actively searching for multifamily real estate investment opportunities in the U.S.," and refers to a letter from a business acquaintance who states that he contacted her as part of that search. However, neither the Petitioner nor the letter writer mention the specific real estate investment entity named in the proposal submitted with his initial filing, nor did he submit additional evidence regarding that entity or its activities in responding to the RFE. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). We will therefore not consider this project as part of the Petitioner's proposed endeavor in our analysis under the *Dhanasar* framework.

the importance and effect of these overall fields and activities. As such, they do not aid in showing the Petitioner's eligibility under the first prong of the *Dhanasar* framework.

Regarding the benefits and impact of the proposed endeavor to raise private equity for oil and gas projects, which the Petitioner asserts will lead to the extraction of oil and gas from the identified prospects, the Fund 1 proposal indicates that the potential reserves include 100 million barrels of oil and 4800 Bcf of gas. The Petitioner refers to the DOE information sheet, which states that oil and gas production "helps save American consumers an estimated $203 billion annually." However, the record lacks context to show that the scope of this particular project is such that it would impact the oil and gas industry, or the regional or national economy, at a broader level.

Similarly, the Petitioner's assertions regarding job creation and revenue are insufficiently supported. The Fund 1 proposal names a number of "preferred" contractors and service providers that would be needed to retrieve and transport the oil and gas from the prospects, all of whom would be managed by the Petitioner and his partners after funding is secured. But it does not indicate the number of hours of labor that would be required from each of these contractors, or otherwise provide a means of assessing the Petitioner's claim that his endeavor would generate a "large number of jobs." The DOE information sheet indicates that the oil and gas industry is responsible for 12.3 million American jobs, and the evidence does not show that the Petitioner's proposed endeavor would have a broader impact in such a large industry, or that it would have a significant potential to employ U.S. workers. *Id.* at 890.

In addition, the Petitioner's focus on a letter from an interested foreign investor as "independent, objective evidence of the national importance" of his proposed endeavor is misplaced. While this evidence may contribute to showing that he is well positioned to advance his endeavor under the second prong of the *Dhanasar* framework, which considers "the interest of potential customers, users, investors, or other relevant entities or individuals" as one of several potential factors, the Petitioner has not shown how it supports the national importance of his endeavor. *Id.*

The record also includes reference letters from individuals who appear to be professional acquaintances of the Petitioner. In addition to discussing the Petitioner's career achievements, which like the investor information above is more relevant to our analysis under the second prong of the *Dhanasar* framework, some of these letters address the national importance of his proposed endeavor. For example, an executive manager for a telecommunications company in Brazil who states that he has closely followed the Petitioner's career opines that "the benefits offered by [the Petitioner's] skills and efforts are undoubtedly in the national interest of the United States." He further writes that because the COVID pandemic created supply chain and consumer spending issues for the U.S. economy, there is a "great need of skilled financial professionals, such as [the Petitioner]." But the writer's focus on the Petitioner's finance skills is not relevant to our determination under the *Dhanasar* framework of whether his proposed endeavor is of national importance.

Another letter, written by the owner and principal of a financial advisory business who states that she has known the Petitioner for over ten years, states that foreign investment such as that proposed by the Petitioner "should be seen as integral to the U.S. economy." While there is ample evidence in the record regarding the value of private equity in general, the writer does not explain how the Petitioner's specific endeavor is nationally important.

For all of the reasons discussed above, we agree with the Director and conclude that the Petitioner has not established the national importance of his proposed endeavor.

III. CONCLUSION

The Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree, but he has not established his eligibility under the first prong of the *Dhansasar* analytical framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the second and third prongs of the *Dhanasar* analytical 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).

ORDER: The appeal is dismissed.