U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35539862

Date: FEB. 13, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a rope access specialist, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested national interest waiver. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. 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. *Id.*

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

[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).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. 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 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,[2] 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.

Id.

II. ANALYSIS

The Director did not make a determination as to whether the Petitioner qualifies for the underlying EB-2 immigrant classification as an individual of exceptional ability[3], but concluded that the Petitioner did not establish eligibility for the requested national interest waiver. Nevertheless, because we agree that the Petitioner is not eligible for a national interest waiver under the *Dhanasar* framework, we reserve our opinion regarding his eligibility for the underlying immigrant classification.[4]

The Petitioner intends to work as a rope access specialist and operate his own construction company, [redacted] According to the record, rope access technicians use practical ropework techniques derived from climbing and caving to access difficult-to-reach locations without the use of scaffolding, cradles, or an aerial work platform. Given the nature of the work, rope access technicians can serve a variety of industries, including the offshore oil and gas industry and the construction and civil engineering industries. In his personal statement, the Petitioner stated that he intends to "apply all [his] knowledge and experience to manage complex systems bringing solutions for high jobsite issues, creating new opportunities of work and training for new professionals to execute extremely complex works." The Petitioner intends to operate his company in Florida to bring

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[3] The Director informed the Petitioner in their request for evidence (RFE) that, because the record did not establish he earned at least a U.S. bachelor's degree or foreign degree equivalent, he was not eligible for EB-2 immigrant classification as an advanced degree professional. In response to the RFE, the Petitioner only asserted his eligibility for the EB-2 immigrant classification as an individual of exceptional ability.

[4] Where a case warrants a dismissal regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)).

his rope access expertise to the state's construction industry, and create a safe and effective manner of executing challenging industrial work that cannot be completed using standard construction methods.

In support of this endeavor, the record contains the Petitioner's personal statement describing his professional background and his company's operations in Brazil as well as his intent to develop a company in the United States, various industry articles and reports providing general background information on the rope access technician occupation, the benefits of rope access to the renewable energy sector, labor shortages facing the construction industry and the growing demand for rope access technicians, as well as articles discussing real estate development in Florida. Additionally, the Petitioner submitted government publications regarding federal initiatives aimed at infrastructure development, several photographs and information discussing his past projects, and recommendation letters from former colleagues and clients commending his reputation as a highly skilled rope access specialist and leader in his field, and detailing the complex projects he completed.

The Director concluded that the record did not establish the Petitioner's eligibility for the requested national interest waiver because he did not meet any of the three *Dhanasar* prongs. Regarding the first *Dhanasar* prong, the Director determined that the Petitioner did not establish the national importance of his endeavor because he did not demonstrate that his company's prospective impact would result in broader implications to the industry commensurate with national importance, nor did he show that the endeavor has a significant potential to employ U.S. workers or otherwise result in substantial economic benefits contemplated in *Dhanasar*. In response to the Petitioner's evidence discussing the importance of his past projects, the Director stated that he had not shown that his work serves as an impetus for progress in his field, affected the industry, or generated substantial positive discourse in the broader community. The Director further concluded that the Petitioner did not demonstrate that he is well-positioned to advance his proposed endeavor, or that, on balance, waiving the job offer requirement would benefit the United States.

On appeal, the Petitioner asserts that the Director did not properly consider the evidence in the record, and applied a heightened standard of proof, contending that the record establishes that he is eligible for the national interest waiver. In regard to the first prong of the *Dhanasar* framework, the Petitioner contests the Director's statement that the Petitioner had not shown that "as a [r]ope [a]ccess [technician] his work serves as an impetus for progress in the field, that it has affected the industry, or that it has generated substantial positive discourse in the broader community," asserting that this shows the Director's decision applied requirements beyond the standard established in *Dhanasar*. Additionally, the Petitioner asserts that the Director erred by not explaining why the record does not establish the Petitioner is well-positioned to advance his proposed endeavor.

We agree with the Petitioner that his past experience and success more appropriately relate to *Dhanasar*'s second prong, not the national importance of his proposed endeavor. Instead, when determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. Accordingly, we withdraw the Director's statements to the extent that they imply the Petitioner must establish his past work served as an impetus for progress in his field in order to establish the national importance of his endeavor. Yet, while we acknowledge the Director's error, because the Director otherwise determined that the record also did not establish the Petitioner's proposed endeavor would result in broader implications commensurate with national importance, and we agree with this conclusion, we conclude that this error was not

material to the decision, nor does it warrant a remand. *See generally Matter of O-R-E-*, 28 I&N Dec. at, 350 n.5 (citing *Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) (stating that error is harmless where there is no "reason to believe that . . . remand might lead to a different result" (citation omitted))). Moreover, on appeal the Petitioner does not establish that the evidence in the record shows that his *specific endeavor* is of national importance. It is not enough to generally assert errors in a decision; the Petitioner must also establish that they were prejudiced by any claimed errors. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *See e.g., Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)).

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Turning to our review of the record, we conclude that while the record contains sufficient documentation to establish the substantial merit of the Petitioner's endeavor, it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

On appeal, the Petitioner continues to assert the national importance of his proposed endeavor by primarily relying on the general benefits provided by the rope access industry and rope access technicians. For example, the Petitioner asserts that the rope access services he provides will benefit U.S. companies and society "as rope access, despite being a highly dangerous profession, is more cost-efficient than using traditional scaffolding and cranes, [which] allows businesses to maintain infrastructure more frequently . . .ensuring uninterrupted services." But this misapplies the *Dhanasar* framework. When determining national importance, the relevant question is not the importance of the field, industry, or occupation in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

Moreover, while the record establishes that the Petitioner's services in rope access may be valuable to his prospective clients, the Petitioner has not supported his claims that his *specific* endeavor will impact the industry more broadly. For example, the Petitioner broadly asserts that, through the rope access services he provides, he will benefit the economy, society, and the industry, adding that he can "conduct[] essential inspections, maintenance, and repairs in bridges, tall buildings, and other infrastructure." But these benefits relate to the overall benefits and importance of his industry, and the rope access technician occupation. The Petitioner has not elaborated on how his specific work will result in broader implications to his field, rather than his immediate prospective clients. In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's prospective clients would not result in broader implications in the field. *Dhanasar* at 893.

We have also reviewed the letters of recommendation and evidence of the Petitioner's prior projects, and while they establish the Petitioner has had a successful career, they do not establish the prospective impact of his proposed endeavor. While we recognize that, through his company abroad, the Petitioner has successfully completed critical projects in the past, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id*. at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor.

Additionally, upon review, we conclude that the record also does not establish that the Petitioner's endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See Dhanasar* at 890. Although the record discusses the economic impact of the rope access industry more generally, including the cost savings it can provide to large development projects, the Petitioner has not shown how his specific endeavor would result in substantial economic benefits discussed in *Dhanasar*. Although any basic economic activity has the potential to positively impact a local economy, without sufficient information or evidence regarding any projected economic impact or job creation directly attributable to his future work (as opposed to the economic impact of the industry more generally), the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached").

ORDER: The appeal is dismissed.