U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34828556

Date: FEB. 18, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager, 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 had established he is eligible for EB-2 classification, the record did not support a finding that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner filed a combined motion to reopen and reconsider that denial with the Director, which they subsequently denied. 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.

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. Our precedent decision, *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:

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

- 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 Petitioner intends work in the United States as a project manager in the mining industry, operating a business he argues will "support the U.S. mineral and fertilizers mining sector." His proposed endeavor is to utilize his business to "provide an exhaustive suite of mining management services to empower his clients to optimize operations" in the United States, and he contends his professional background gives him the necessary experience to succeed in this endeavor.

The Director determined that the Petitioner did not establish on motion that his proposed endeavor had national importance, that he was well-positioned to advance the proposed endeavor, or that on balance, waiving the job offer requirement would benefit the United States. The Director dismissed the motion, finding the Petitioner had not overcome the basis for the denial or otherwise established the denial of his petition was based on an incorrect application of law or policy. We agree that the Petitioner has not established that that waiver of the job offer requirement was in the national interest and will dismiss the appeal accordingly.

The Petitioner asserts on appeal that the Director erred in dismissing his motion to reconsider, as the Director based the decision denying the petition on an incorrect application of law at the time the decision was rendered. The Petitioner further asserts that the Director did not give due regard to evidence including his business plan, evidence of his work in the field, letters of recommendation, and government reports and articles and states that this evidence establishes by a preponderance of the evidence that his proposed endeavor has national importance.

The first prong of the *Dhanasar* analytical framework, 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. The Director found that the Petitioner did not establish that his proposed endeavor met the national importance element of the first prong of the *Dhanasar* framework. Specifically, the Director determined the Petitioner did not establish his proposed endeavor would have broader implications to the field of mining, have significant potential to employ U.S. workers, or otherwise have substantial positive economic effects such that he established its national importance.

Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. An endeavor may have national importance if it "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area . . .." *Id.* at 890. The Petitioner asserts on appeal that the Director did not fully consider his business plan and other evidence related to his

proposed endeavor and states that his mining consultancy company will generate jobs for U.S. workers and will have a significant impact on the local and national economy by "driving economic growth." In his business plan, the Petitioner indicated his proposed company would have the potential to employ 12 people by the end of the first five years of business. However, the business plan does not provide sufficient explanation for the basis of these projections. Further, even if sufficient basis were provided for the proposed endeavor's revenue and job creation projections, these figures do not establish that the Petitioner's company would operate on a scale rising to the level of national importance. The Petitioner has not explained how his proposed employment metrics would have impact beyond his business's area of intended operations. Upon de novo review, we find that the Petitioner did not establish his proposed endeavor would have substantial positive economic effects.

Further, the Petitioner did not establish the specific proposed endeavor will have substantial national implications or have a broader impact beyond the individual clients served by his company. On appeal, the Petitioner references numerous potential contributions of his business, such as, empowering clients in the mining industry to optimize operations and achieve peak performance, assisting mining operations in enhancing their productivity, and helping mining operations adopt sustainable practices and navigate the evolving challenges of the field. He previously submitted a business plan and letters of recommendation to support his assertion that his proposed endeavor will have a significant, broad impact. The letters speak to the Petitioner's skills and knowledge of the mining industry, referring to him as "a dedicated talented hard worker . . . with great integrity and work ethics." When determining the national importance of a proposed endeavor, under *Dhanasar*, we focus on "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.* Although the Petitioner asserts his company will have broad impacts on the national economy and on many facets of the mining and fertilizer industries, the evidence submitted by the Petitioner does not establish his proposed endeavor would operate on such a large scale to have a national impact on any of his claimed industries. The Petitioner has emphasized the importance of fertilizer production, including in relation to the implementation of the Global Food Security Strategy in the United States, and claims his business will have national implications due to the need for the services provided and the value in growing businesses to support the U.S. economy. However, the evidence does not address the relevant question of the importance of the specific endeavor that the Petitioner proposes to undertake, rather than the general field in which he intends to work. *See id.* at 889. While we acknowledge the importance of the fields of mining and fertilizer production, the Petitioner did not establish his proposed endeavor would have broader implications to the overall fields to establish its national importance. *See id.* at 893.

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the Petitioner has not demonstrated eligibility for a national interest waiver. As 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 "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. Further, he has not established the Director erroneously denied his motion to reconsider where the underlying decision was not based on any incorrect application of law or policy at the time it was rendered. Thus, the appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.