U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29667417

Date: FEB. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner 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 an industrial engineer focusing in the area of lean production. He earned a master of science degree in industrial engineering from [redacted] in 2017, and has worked as an industrial engineer since. As he is eligible for the EB-2 classification as a member of the professions holding an advanced degree, the sole issue on appeal is whether he merits, as a matter of discretion, a national interest waiver of the classification's job offer requirement.

In his initial filing, the Petitioner stated that his proposed endeavor was to work in the area of lean manufacturing or lean production. Although he described his previous employment as a continuous improvement engineer, and briefly mentioned a plan to work in the semiconductor industry, he did not provide sufficient detail about his proposed endeavor. When responding to the Director's request for evidence (RFE), the Petitioner submitted a business plan for [redacted] a consulting company he planned to found and operate that would provide implementation of smart lean material handling systems (SLMHS), offering services including software and technology integration, automation, warehouse design, and preventive maintenance.

After reviewing the Petitioner's initial submission and RFE response, the Director determined that the new evidence provided reflected an impermissible material change in the Petitioner's proposed endeavor, and thus could not be considered. 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). On appeal, the Petitioner asserts that his business plan and updated statement in the RFE response did not introduce a new endeavor, but provided more detail about the endeavor initially described. We agree, since these materials provided the necessary details about how the Petitioner would pursue his initially proposed endeavor in the field of lean manufacturing and lean production. We will therefore consider the business plan and other related evidence submitted in our analysis under the *Dhanasar* framework.

The first prong of the *Dhanasar* analytical framework, concerning the substantial merit and national importance of the proposed endeavor, 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.

[1] *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).

The Director concluded that the Petitioner's initial proposed endeavor, employment as a continuous improvement engineer in lean manufacturing, was of substantial merit. In support of the Petitioner's updated proposed endeavor, he submitted evidence regarding the importance of increased automation in the manufacturing industry and the benefits of the lean manufacturing processes that his company would offer. This evidence establishes the substantial merit of his endeavor in the fields of business and technology.

Turning to the national importance of the Petitioner's proposed endeavor, the Director determined that the Petitioner focused on his qualifications and achievements, factors that she noted are considered under the second prong of the *Dhanasar* framework, and not on the potential prospective impact of the endeavor. In addition, the Director noted that the Petitioner stressed the importance of the field of lean manufacturing rather than that of his specific proposed endeavor, relying on articles about the importance of the manufacturing industry in the United States and referring to government reports discussing commerce, productivity and transportation. She ultimately concluded that because the effect of the Petitioner's proposed endeavor would not extend beyond his employer and the clients served, it would not have broader implications for the field and is therefore not of national importance.

On appeal, the Petitioner initially asserts that his proposed endeavor is of national importance due to the prospective job creation evidenced in the business plan for [redacted] He cites to *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998) for the proposition that a business plan must be sufficiently detailed to support the potential for job creation, and asserts that his business plan provides the necessary detail to support the credibility of his job creation claims. However, the plan lacks details about how many and what type of jobs would be created through his proposed endeavor. On page 10 of the plan, the Petitioner lists three job titles and descriptions: chief executive officer (CEO) (himself), project manager and engineer, and administrative assistant. The plan later discusses job creation on page 23, mentioning job opportunities in software development, technology integration, automation, and maintenance services, but this section also doesn't provide an estimate of the number of these positions to be created, or describe the duties to be performed.

Further on, the plan projects the company's salary payments as more than $228,000 after five years of operation, but does not indicate the type or number of employees who are earning these salaries, or whether the increase in salaries over the five-year period reflects the hiring of additional employees or increases to the salaries of existing employees. Due to this lack of detail in the record regarding the proposed endeavor's creation of new jobs, including the justification for hiring multiple employees, we conclude that the Petitioner has not demonstrated that it "has significant potential to employ U.S. workers." *Dhanasar*, 26 I&N Dec. at 890. We also note that the Petitioner does not claim that it will employ workers in an economically depressed area, an additional factor for consideration under the *Dhanasar* framework. *Id.*

The Petitioner further asserts on appeal that his proposed endeavor as CEO of [redacted] "will reinforce domestic manufacturing," "promote economic resilience" and "promote sustainability" by mitigating future supply chain disruptions. He previously submitted evidence including a report from the National Science and Technology Council titled *National Strategy for Advanced Manufacturing* dated October 2022, as well as a fact sheet from the Biden administration regarding its "American Jobs Plan." Both of these documents highlight the administration's focus on revitalizing the U.S. manufacturing industry, including the use of smart manufacturing technology of the kind the Petitioner

states his company would help to implement. But while this evidence shows that the field of industrial engineering in which the Petitioner proposes to engage can contribute to addressing these national goals, it does not show that his specific proposed endeavor has the potential for broader implications in that field or the manufacturing industry. As noted by the Director, [redacted] will serve an inherently limited number of clients, and the Petitioner has not established that his work as its CEO stands to have substantial positive economic effects that would extend beyond that client base or would otherwise be of national importance.

After filing his appeal and brief, the Petitioner submitted an additional letter referencing potential revisions to the Department of Labor's (DOL) Schedule A regulations to incorporate STEM occupations. He points out that he holds a bachelor's and master's degree in STEM fields, and that his proposed endeavor would involve working in a STEM field to implement lean manufacturing techniques. The Petitioner points out that DOL's request for information notes the discussion about labor shortages in STEM fields, and efforts to address the shortage, and asserts that these show the national importance of his proposed endeavor.

We note that this request for information is a preliminary step in any rule-changing process, and the fact that DOL is seeking information about the status of labor shortages in STEM fields does not materially change whether the Petitioner's proposed endeavor is of national importance. But USCIS recognizes the importance of STEM fields, and considers this when evaluating petitions for national interest waivers when the petitioner holds an advanced STEM degree, particularly a Doctor of Philosophy (Ph.D.), and proposes an endeavor connected to that STEM field. *See generally* 6 *USCIS Policy Manual* F.5((D)(2), www.uscis.gov/policy-manual. While many proposed endeavors that aim to advance STEM technologies and research may have sufficiently broad potential implications to establish their national importance, the burden of proof remains on the petitioner to establish, by a preponderance of the evidence, that their endeavors are of national importance. *Chawathe*, 25 I&N Dec. 375-76. As in the *Dhanasar* petitioner's proposal to engage in STEM education, a proposed endeavor in a STEM field but with limited potential impact in the field are not of national importance. Here, although the Petitioner's proposed endeavor is of substantial merit in relation to U.S. technology and economic interests, he has not demonstrated that acting as the CEO of a firm providing engineering services would have sufficient implications in the engineering field or manufacturing industry to be nationally important.

For all of the reasons discussed above, we conclude that the Petitioner has not established that he satisfies the first prong of the *Dhanasar* analytical framework.

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.