U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29846157

Date: FEB. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a mechatronics engineer, technologist, and consultant, 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 did not establish his proposed endeavor is of national importance, and thus merits, as a matter of discretion, a waiver of the job offer and labor certification process in the national interest. 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.

After summarizing and analyzing the evidence in the record, the Director concluded the Petitioner did not establish eligibility for a national interest waiver and denied the petition.[1] In so doing, the Director addressed the claimed prospective impacts of the proposed endeavor on the economy, and the field of manufacturing, as well as the Petitioner's expertise and prior professional achievements. The Director discussed the Petitioner's claims relating to how his endeavor would impact the economy's manufacturing processes, and increase his client's manufacturing efficiency, as well as the specifics of the Petitioner's business plan, and the endeavor's claimed ties to policy objectives of national importance. The Director also considered the Petitioner's interest in working with state and federal government organizations that work on issues related to the environment and economy. Lastly, the Director considered the Petitioner's claims and assertions related to the national importance of his endeavor and concluded that there was insufficient evidence of the endeavor's broad implications for

[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 is discretionary in nature).

the field at large, and that any likely effects would be "immeasurable or insignificant" beyond the individual clients he served.

On appeal, the Petitioner submits a brief, reasserting his eligibility and relying upon the evidence and arguments previously provided to explain the national importance of his endeavor. The Petitioner contends that the Director conflated his proposed self-employment with the proposed endeavor and that the Director did not sufficiently analyze the evidence or explain why the evidence is insufficient. Additionally, the Petitioner claims that the Director did not properly consider his evidence because he concluded that the Petitioner provided no objective evidence to support his endeavor's national importance. Lastly, the Petitioner asserts the denial is therefore contrary to precedent case decisions and USCIS policy because the Director applied an improper standard and abused their discretion.

We adopt and affirm the Director's decision regarding the Petitioner's eligibility under the first *Dhanasar* prong. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Petitioner's proposed endeavor is to "help America's industrial companies have a positive impact on the environment, reduce costs and improve performance. [He] will do it through the creation of a company . . . called [redacted]." In asserting that the Director conflated the Petitioner's proposed endeavor with his proposed self-employment, he refers to the Director's statement that the Petitioner intends to "create his own industrial machinery services . . . [and that his] business would likely only have an effect on its individual clients, and that any further effects would be immeasurable or insignificant to the overall economy." The Petitioner contends that that the proposed employment is "plainly different from the company [he] seeks to create in furtherance of the endeavor." Although the Petitioner asserts that there is a distinction between the endeavor and the company he intends to establish in furtherance of the endeavor, he has not sufficiently explained the distinction or how it should have impacted the Director's analysis. For example, in his personal statement, the Petitioner explains that he will carry out his endeavor "through the creation of a company." Therefore, the Petitioner has not established that the Director erred by analyzing the company's potential impact on the field or the economy more broadly in assessing the national importance of the endeavor.

The Petitioner further claims that the Director did not properly analyze the evidence or sufficiently explain the basis for denial, however this claim is not supported by the record and the Petitioner has not otherwise sufficiently explained or supported his claim that there was "ample evidence" that the Director failed to consider. Rather, upon de novo review, the Director's decision reflects that they reviewed, discussed, and analyzed the Petitioner's documentation consistent with our precedent decision in *Matter of Dhanasar*. *See Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) (noting that "[s]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the

petitioner presented").[2] As such, the Petitioner's contentions do not overcome the basis for the denial and are insufficient to establish the proposed endeavor's national importance.

As stated, we adopt and affirm the Director's decision regarding the Petitioner's eligibility under the first *Dhanasar* prong.[3]

ORDER: The appeal is dismissed.

[2] To the extent the Petitioner argues that failure to consider all the evidence submitted has been found to be an abuse of discretion, we agree that an adjudicator should consider the relevant evidence in the record. However, the Petitioner has not established that the Director did not consider all pertinent evidence in the record.

[3] 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 "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).