U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37163643

Date: FEB. 27, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks employment-based second preference (EB-2) immigrant classification as 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 that the national importance of the Petitioner's proposed endeavor. 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. *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

[1] *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).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

II. ANALYSIS

The Petitioner intends to serve as the CEO of Massachusetts-based company that will provide construction consulting services focused on efficiency, sustainability and technological integration. The Petitioner aims to offer consulting to improve the implementation of sustainability initiatives in the construction sector, advise construction project professionals on technological developments, and obtain general process improvements.

The Director found the Petitioner qualified for underlying EB-2 classification. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that the national importance of the endeavor had not been demonstrated under prong one, and that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that the Endeavor Has National Importance

On appeal, the Petitioner argues that the Director failed to provide a detailed analysis of the evidence, particularly the business plan, when determining whether the proposed endeavor had national importance. He highlights that the Director was required to provide a reasoned decision that clearly addressed all three prongs of the framework and alleges that the Director failed to follow the USCIS Policy Manual. He contends that the Director's focus on the supporting articles and reports he submitted, and the exclusion of the business plan, made the denial arbitrary and capricious. He also argues that the Director did not analyze his petition using the preponderance of the evidence standard, and he instead contends that "USCIS is requiring that I prove my case to the extent that no reasonable individual could reasonably doubt that I am eligible for the classification sought." He argues that, when conducting a forward-looking analysis of the potential impact of the endeavor, he has shown the national importance of the endeavor. He highlights that the benefits of construction are not limited to the construction phase; rather, an office building stands to bring in additional revenue, jobs, and other benefits through the use phase of a building.

In support of these contentions, the Petitioner has submitted evidence including, but not limited to: a business plan covering five years of operations; an expert opinion letter concluding that his endeavor is of national importance; letters of support from construction professionals and former clients;

documentation showing his educational and professional experience, and reports detailing the impact of the construction sector, with a particular focus on affordable housing. The Petitioner stresses that he is a highly skilled civil engineer with expertise in a broad range of projects.

We agree that the Director's decision did not clearly analyze the record and provide a full explanation of why the proposed endeavor was insufficient. However, after de novo review, we conclude that the Petitioner has not satisfied the first prong of the *Dhanasar* framework requiring a proposed endeavor to be of national importance. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the proposed endeavor. *Id.* at 889. An endeavor may have an impact rising to the level of national importance "because it has national or even global implications within a field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* An endeavor may also have other broader implications that make it nationally important, such as the "significant potential to employ U.S. workers" or other "substantial positive economic effects." *Id.* at 890. The Petitioner broadly asserts that his proposed endeavor demonstrates these types of impacts, but the record does not support this contention.

In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact the construction industry or otherwise impact economic initiatives more broadly at a level commensurate with national importance. Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. He has not shown that the company's future staffing levels, business activity, associated tax revenue, and financial initiatives stand to provide substantial economic benefits in Massachusetts or in the United States generally.

Although the evidence reflects the Petitioner's intention to provide valuable services for the construction companies and project management initiatives he would consult for, his contentions regarding the broader impacts are insufficiently supported and attenuated from the actual endeavor. The listed benefits are not the direct consequence of the Petitioner's endeavor; rather, they rely on a series of assumptions that his consulting advice will result in consequential improvements to construction projects, which will in turn lead to the successful completion of construction projects and a positive and profitable occupancy and use phase for each building. The Petitioner has not provided us with sufficient evidence that his endeavor has the potential to spur construction, improve building usage, or otherwise be the catalyst for such broad change.

The Petitioner also argues that his endeavor aligns with national initiatives to increase STEM talent in the United States; he contends that his extensive engineering experience would make his work impactful and provide benefits in line with these initiatives. The Petitioner is correct that a proposed endeavor "may be based on reasonable projections, rather than any certainty of immediate results." However, the focus in determining national importance is on the proposed endeavor; a petitioner's experience and efficacy, and the overall likelihood of success, is relevant to the second prong, whether the petitioner is well positioned to carry out the endeavor. *Id.* at 890. The fact that a proposed endeavor is carried out by a STEM professional does not necessarily make the endeavor nationally important.

Similarly, the Petitioner has not shown by a preponderance of the evidence that his consulting work will offer the type of "improved manufacturing processes" or similar outcomes in the United States that would be considered nationally important to the field. *Id.* at 889. While the Petitioner indicates that he intends to remain abreast of technological advancements and communicate these to clients, the Petitioner has not shown that he has or will develop such processes or otherwise advance the field.

The Petitioner has also not demonstrated by the preponderance of the evidence that the proposed endeavor would have a substantial economic benefit. While the business plan outlines the intent to hire various employees throughout the five-year period, and to reach several million dollars in revenue by year five, the support for these figures has not been provided. Additionally, the Petitioner does not explain how this benefit should be considered substantial compared to a construction industry that operates with billion- or trillion-dollar revenues across the United States.

Ultimately, the record does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Although the Petitioner has highlighted the importance of good construction practices and the possible downstream benefits, he has not shown that the consulting services performed by the company would represent a significant share of the construction market or otherwise have a national impact.[2]

Because the record does not establish the national importance of the proposed endeavor, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the third prong to qualify for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because he has not met the first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[2] The Petitioner argues that affordable housing is a critical resource in the United States. However, the Petitioner's business plan or related filings do not address affordable housing or otherwise indicate how he would meaningfully impact the need for affordable housing in the United States.