U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37095903

Date: FEB. 28, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an engineer, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, as well as a national interest waiver of the job offer requirement attached to this classification. 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 demonstrate that he merits a discretionary waiver of the job offer requirement in the national interest. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

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. 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.

Id.

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

II. ANALYSIS

The Director determined that the Petitioner qualified for classification as an advanced degree professional and that the proposed endeavor has substantial merit. However, the Director concluded that the Petitioner did not establish that the proposed endeavor has national importance or that waiving the job offer requirement would benefit the United States.

A. Substantial Merit and National Importance

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Id. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education.

On appeal, the Petitioner asserts that the Director erred by misinterpreting the Dhanasar framework by stating that Dhanasar requires petitioners to demonstrate that their proposed endeavor has national or global implications; must impact the field more broadly at a level commensurate with national importance; or have impact that would rise to the level of national importance – when in actuality, Dhanasar provides that an undertaking may be demonstrated by the aforementioned metrics. The Petitioner further asserts that the Director erred by not addressing his eligibility under prongs two and three of the Dhanasar framework.

As noted by the Petitioner, in Dhanasar we stated 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. at 890. 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. Further, in determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer.[2]

Although the Director concluded that the Petitioner did not establish that the proposed endeavor is of national importance, the Director did not apply any factors to the Petitioner's evidence or explain why the evidence was insufficient to establish eligibility under this prong. Specifically, the Director stated that "the petitioner provided a letter that indicates he intends to continue working as an engineer in the United States and use his expertise and knowledge to generate technological advances in the field of mechanical engineering in the oil and gas sector" but "the petitioner must show that the potential prospective impact of his proposed endeavor" would have a national impact on the oil and gas industry in the United States." The Director immediately followed this with excerpts from Dhanasar and several conclusions, including: "[T]here is no evidence to prove that he will potentially impact the oil and gas

[2] See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

industry at a national level;" "[T]here is no evidence in the record to explain and demonstrate how the petitioner's proposed endeavor will extend beyond the organization and its clients to impact the industry more broadly;" and "The evidence submitted does not support the petitioner's statements that the proposed endeavor would reach the level of 'substantive positive economic effects' contemplated by Dhanasar."

In the present case, the Director did not refer to any of the evidence submitted by the Petitioner or explain how the evidence in the record led to the determination that the Petitioner did not establish that the proposed endeavor is of national importance. However, the Director must explain in writing the specific reasons for the decision. C.F.R. § 103.3(a)(l)(i).[3] The Director should also analyze the evidence and conclude whether the Petitioner's endeavor has national importance. The Director should focus on what the Petitioner will be doing rather than the specific occupation, and should keep in mind that it is the national importance of the Petitioner's specific proposed endeavor that must be shown. An endeavor having significant potential on the broader implications for a field generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver. The Director should review the record to determine whether the Petitioner has demonstrated his proposed endeavor has significant potential on the broader impact in the engineering field rather than in the oil and gas industry in the United States.

B. Remaining Eligibility Requirements

Because the Director determined that the Petitioner did not meet the requisite first prong of the Dhanasar analytical framework, the Director declined to address the Petitioner's eligibility under Dhanasar's second and third prongs. On remand, the Director should address all the Petitioner's arguments and evidence for the second and third prongs and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

For the above reasons, we will withdraw the Director's decision and remand the matter for further consideration. On remand, the Director should review and fully analyze the entire record in considering whether the Petitioner has established eligibility under the Dhanasar framework. If appropriate, on remand the Director may issue a Request for Evidence or Notice of Intent to Deny. The Director must then issue a new decision, addressing all the relevant evidence to decide the merits of the Petitioner's claim of eligibility for a national interest waiver.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[3] See also Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).