U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35366741

Date: JAN. 08, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a health and safety 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 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. 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. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

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,[2] 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.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree, a determination the record supports. In denying the petition, the Director determined that the Petitioner's proposed endeavor had substantial merit under the first *Dhanasar* prong and that he was well-positioned to advance it under the second prong. However, the Director concluded that the Petitioner had not sufficiently demonstrated his endeavor's national importance under the first *Dhanasar* prong.[3]

On appeal, the Petitioner argues that he has demonstrated eligibility for the national interest waiver, including the national importance of his proposed endeavor. With the petition, the Petitioner detailed his plans to launch a business addressing workplace safety, first in Florida later in New Hampshire and Texas. He stated that he is an electrical, health, and safety engineer with over 13 years of experience developing procedures and trainings as well as performing audits on this topic. The Petitioner's business would provide consulting services to the construction and railroad in order to comply with Occupational Safety and Health Administration (OSHA) procedures and prevent workplace injury and death. He asserted that his prospective clients and locations of operation were those with high concentrations of such incidents. The Petitioner contended that the company would begin with an initial investment of $120,000 and would create 27 new jobs resulting in $3 million in salaries and $3.8 million in tax revenue by its fifth year. In support of this contention, he cited figures regarding the increased revenue of the construction sector and regulations by state and federal agencies as an opportunity for the Petitioner's endeavor. The record includes the Petitioner's resume, a business

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[2] *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).

[3] The Director additionally determined that, on balance, it would not be beneficial to the United States to waive the requirements of a job offer.

plan, an academic evaluation, academic records, professional training certificates, letters of recommendation from colleagues and academics, professional licenses from federal and state authorities in Brazil, materials related to presentations by the Petitioner, web site printouts showing U.S. federal government job openings for safety engineers, and industry reports and articles regarding workplace safety and health and safety engineers.

On appeal, the Petitioner claims that the Director did not give due regard to his resume, business plan, evidence of his work in the field, letters of recommendation, and industry reports and articles. The Petitioner states that his endeavor aligns with U.S. national priorities and would contribute to the overall well-being of the U.S. workforce by improving safety standards in high-risk industries. He additionally asserts that he has shown that his endeavor would address a shortage of U.S. professionals in his field, particularly in high-risk sectors such as construction and railroads. Further, he contends that his endeavor would enhance livelihoods and contribute to U.S. economic prosperity by generating employment and revenue in a historically under-utilized business zone in Florida.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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.* This impact need not be geographically national in scale but must demonstrate broader impact to a particular area, region, or industry. *Id.*

Here, the Petitioner's reliance on the national importance of the goals his endeavor seeks to address is misplaced. Merely working in an important field is insufficient to establish the national importance of a proposed endeavor without evidence documenting the "potential prospective impact" of a petitioner's work. *Id.* In this case, the Petitioner has not provided sufficient relevant, probative and credible evidence of this impact, as required. *See Matter of Chawathe*, 25 I&N Dec. at 376. He has not, for example, provided corroborating evidence to support his claim on appeal that his "use of advanced data analytics and state-of-the-art technology in safety management represents a significant innovation in his field." The support letters in the record discuss the Petitioner's past professional accomplishments rather than the potential of his proposed endeavor to impact his field more broadly, while the industry reports and articles discuss his field generally. In addition, although the Petitioner claims that his endeavor would address a shortage of professionals in his field, he did not elaborate precisely how he would do this, such as whether he would generate new jobs or train new professionals. Rather, this argument is more relevant to the Petitioner's eligibility for the instant petition under the third *Dhanasar* prong, which contemplates whether it would be beneficial to waive the labor certification requirement for the Petitioner individually.[4]

Next, the Petitioner renews claims that his company will generate economic activity, particularly in an economically distressed area. In *Dhanasar*, we 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.* at 890. While the Petitioner detailed financial and staffing projections in his business plan, the record

[4] As discussed below, we decline to reach the Petitioner's arguments related to the third *Dhanasar* prong.

does not sufficiently describe the basis for these figures or how they will be realized such that they are sufficient to demonstrate substantial impact.

As a general matter, it is the Petitioner's burden to prove by a preponderance of evidence that he is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* On appeal, the Petitioner refers to the evidence he previously submitted. Commensurate with the Petitioner's burden of proof is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014); *see also Adler v. Duval Cnty. Sch. Bd.,* 112 F.3d 1475, 1481 n. 12 (11th Cir. 1997) (noting in a civil case that, absent plain error, it is not the place of an appellate body to grant appellants relief "based on facts they did not relate"). In this case, the Petitioner has not specified how these documents establish his eligibility for the national interest waiver as claimed. As such, and for the reasons detailed above, the Petitioner has not sufficiently established that his proposed endeavor in the United States will have national importance under the first *Dhanasar* prong.[5]

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining eligibility requirements for the requested national interest waiver. *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).

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.

ORDER: The appeal is dismissed.

[5] The Petitioner also argues that the Director did not apply the proper standard of proof in denying his petition and instead erroneously imposed a stricter standard. However, he did not elaborate this argument or specify what improper standard the Director applied in his case.