U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35751144

Date: JAN. 8, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical 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. The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. However, the Director concluded that the record did not establish that a waiver of the job offer requirement, and thus of a labor certification, would be 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 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:

[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).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance the 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. However, for the reasons discussed below, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. *See id.*

The Petitioner described the endeavor as a plan "to continue his work maintaining state-of-the-art optical coordinate measurement machines for the U.S. auto industry to reduce carbon emissions and mitigate climate change." He asserted that he works as an independent contractor, providing "the exclusive source for maintenance of these machines for several corporations with substantial economic footprints in the United States, including [redacted] The Petitioner also submitted letters of recommendation and publications that provide generalized information regarding fuel economy standards and public health.

The Director determined that the proposed endeavor has substantial merit, as required in part by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. However, the Director observed that the record "does not convey an understanding of how [the Petitioner's] proposed employment activities stand to have a broader impact on the field, rising to the level of national importance," also required by the first *Dhanasar* prong. *See id.* The Director acknowledged that the record contains recommendation letters; however, the Director noted that neither the letters nor the remainder of the record "show how the [P]etitioner's proposed endeavor offers broad implications in the field that rise[] to the level of national importance." The Director acknowledged that the Petitioner submitted generalized information regarding fuel economy standards and public health. However, the Director noted that those publications do not mention the Petitioner or describe the specific endeavor he proposes to undertake, and they do not establish how the proposed endeavor may have national or even global implications within his field. *See id.* The Director further observed that the record does not "provide specific information on how [the Petitioner] will create jobs and enhance societal welfare, rising to the level of national importance," or how the proposed endeavor may otherwise have substantial positive economic effects. *See id.* Based on those issues, the Director concluded the record does not establish the proposed endeavor has national importance, as required by the first *Dhanasar* prong. *See id.* The Director further concluded that the record does not satisfy the second and third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner reasserts that generalized information in the record regarding fuel economy standards and public health establish that the proposed endeavor has national importance. More specifically, the Petitioner references "two publications from the Executive Office of the President of the United States, one from the White House, and one from the U.S. Environmental Protection Agency [(EPA)]," "a publication from the U.S. Department of Transportation and [two] Executive Order[s] issued by the White House." The Petitioner paraphrases the EPA publication as "stating that the transportation sector is 'the largest contributor of [greenhouse gas] emissions and EPA is addressing

climate change by taking . . . actions to reduce [those] emissions.'" In turn, the Petitioner quotes one of the Executive Orders as stating, "It is the policy of my Administration that climate considerations shall be an essential element of United States foreign policy and national security," and "[t]his Nation needs millions of construction, manufacturing, engineering, and skilled-trades workers to build a new American infrastructure and clean energy economy." The Petitioner reasserts on appeal that the referenced documents providing generalized information regarding fuel economy standards and public health establish that the proposed endeavor of working as an independent contractor "maintain[ing] machines used to manufacture fuel-efficient engines plainly 'impact[s] a matter' that the U.S. government has deemed of critical national importance," citing the USCIS Policy Manual.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 889-90.

The record does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See id.* We first note that the generalized information in the record regarding fuel economy and public health, referenced by the Petitioner on appeal, does not address the Petitioner, the specific endeavor he proposes to undertake, and how its potential prospective impact may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See id.* For example, the publications referenced by the Petitioner do not establish how his proposed endeavor of continuing to work as an independent contractor may have national or even global implications within the field of automotive manufacturing or any other particular field, such as those resulting from certain improved manufacturing processes or medical advances. *See id.* As another example, the publications do not establish how the Petitioner's proposal to work as an independent contractor may have significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. *See id.* Rather, the generalized information addresses the industry, field, or profession in which the Petitioner will work, including broad topics such as the transportation sector, greenhouse gas emissions, climate considerations, categories of workers.

In turn, the record in general indicates that the proposed endeavor may benefit the Petitioner, as an independent contractor, and the particular corporations for which he proposes to continue providing his services. However, the record does not establish how the Petitioner's proposed endeavor to provide maintenance services for his client companies in the U.S. automotive industry may have national or even global implications beyond his clients, within the field of automotive manufacturing or any other particular field, such as those resulting from certain improved manufacturing processes or medical advances. *See id.* Although the Petitioner quotes an Executive Order that references a need for "millions of . . . skilled-trades workers," the record does not establish how the Petitioner, as an independent contractor, demonstrates a significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area, whether for his

own independent contracting business, his clients, or any other potential employer of U.S. workers. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.