U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33960348

Date: JAN. 14, 2025

Appeal of Texas Service Center Decision

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

The Petitioner 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 the record did not establish that a waiver of the required job offer, and thus of the 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. Our precedent decision in *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 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.

II. ANALYSIS

The Director determined that the Petitioner qualified for the requested EB-2 classification as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. Specifically, the Director concluded that, while the Petitioner demonstrated his proposed endeavor had substantial merit, it did not also have national importance and therefore did not satisfy *Dhanasar's* first prong. We agree. In particular, we conclude that the Petitioner has not submitted sufficient evidence regarding his proposed endeavor's substantive nature such that we can even evaluate whether it has national importance.[2] And since we cannot even *conduct* that analysis, we are certainly incapable of concluding it in the Petitioner's favor. The Petitioner, therefore, has not established that his proposed endeavor holds national importance, thereby precluding a finding that he satisfies *Dhanasar's* first prong.

The precise nature of the Petitioner's proposed endeavor is unclear. In his initial filing, the Petitioner submitted a professional plan and personal statement explaining he planned to work as a real estate developer "to help remediate the housing shortage by developing affordable, workforce, and senior housing" in Florida. In response to the Director's request for evidence (RFE), the Petitioner submitted a new personal statement and business plan. He claimed that his endeavor would be "to work through my company, [redacted] offering real estate development and project management, stemming from technical guidance from understanding and collaborating with engineering professionals to negotiating contracts and managing personnel with a focus on projects in the affordable and senior housing sector." In his business plan, the Petitioner stated his company would "provide ground-up development, renovation, and adaptive reuse of affordable, workforce, and senior housing to rent them to the low-income or underprivileged individuals and families across the U.S." He further claimed that his company "will collaborate with investors to co-invest . . . and handle the construction, financial asset management, and property management of the projects."

In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the nature of the Petitioner's proposed endeavor is unclear. The information he provided in his RFE response did not clarify his initially described proposed endeavor of working as a real estate developer, but rather expanded the focus and scope of his future work altogether. In his RFE response, the Petitioner cast a wide net extending from affordable housing development, to remodeling houses, to property management, but he did not provide sufficient details on how he plans to accomplish each of the stated objectives within these three discrete components.[3] Consequently, we are left with significant concerns about the broad and ill-defined scope and nature of the Petitioner's proposed endeavor.

[2] While we may not discuss every piece of evidence individually, we have reviewed and considered each one.

[3] While the Petitioner referenced additional services he will provide within these components, such as senior care, financial assistance, and real estate investment services, the specific nature of his future work remains ambiguous and vague for the reasons discussed below.

For example, the record is unclear as to whether the Petitioner plans to rent or sell the houses in his future portfolio. While his business plan states his company will "specialize in the development and renovations of houses and multifamily properties with the goal of renting the properties to low-income or underprivileged individuals and families and seniors throughout the U.S.," the plan also suggests he intends to sell properties to medium-income families and "low-income households interested in building high-quality, environmentally friendly, and affordable, low-cost homes."

If, in fact, the Petitioner plans to rent the housing units, the record is also unclear as to whether his company itself will rent the units or would manage and rent them on another entity's behalf. For instance, while the business plan claims that the Petitioner will "become a Section 8 landlord in order to further benefit the low-income community in the U.S.," he also claims he will offer property management services, including account management, regular property inspections, 24/7 maintenance, cleaning, facility recommendation, emergency services, and marketing programs.

The record is similarly unclear as to whether the Petitioner's renovation services would be limited to the affordable housing units contained within his portfolio, or whether he plans to offer his services to any interested individual. For example, while his business plan states his company will "remodel houses and multifamily units with the aim to rent them to low-income families and seniors," the plan also indicates that he intends to "fulfill the current demand for remodeling services," which would "enhance homeowners' properties, thereby increasing house prices and more affluent communities and contributing to higher consumer spending levels and, ultimately, economic growth." This appears to indicate that the Petitioner also plans to provide general renovation services, which are seemingly unrelated to his stated objectives of developing real estate for purposes of affordable housing. In any event, the lack of clarity regarding the endeavor's actual focus prevents us from conducting a meaningful analysis under *Dhanasar's* first prong.

The Petitioner also described other aspects of his proposed endeavor in his RFE response that further added to the lack of clarity. For example, while the Petitioner's initial filing stated that he planned to develop affordable housing units for seniors, his RFE response expanded his proposed endeavor to provide independent living, assisted living, and skilled nursing facilities for seniors with "access to social and recreational activities and various support services such as meals, transportation, and healthcare." We note that these activities, particularly the provision of healthcare services, are markedly different from his initially described endeavor of real estate development. Moreover, the Petitioner provides little detail on how his real estate development company would be involved in offering these services including, for example, how much of his endeavor would be devoted to managing these facilities and what his specific role would be in implementing them.

Further, the Petitioner claims his endeavor will help seniors age safely, comfortably, and affordably in their homes and communities "[b]y expanding the supply of aging-friendly housing options, rental assistance, and home repairs and modifications." However, he does not explain the details of any rental assistance programs his company would provide, including who would qualify, for what amount, where the financial assistance funds would originate, or any other parameters of the program. He also does not elaborate on what "home repairs and modifications" his company would provide, to whom, and under what circumstances, as well as whether these services would be provided for those renting the units or also for seniors owning their homes.

The Petitioner also vaguely asserts that he will provide a "comprehensive set of services dedicated to investment in the U.S. real estate market," including "provid[ing] financial assistance services for individual and corporate investors aiming to enter the real estate market." But, the Petitioner does not explain what these "financial assistance services" would be, including, for example, the program's parameters, who would qualify, and how he plans to fund the financial assistance. We consider these significant omissions.

Lastly, it is unclear who the Petitioner's clients will be—whether private individuals who are buying property, private individuals who are renting property, investors, government entities, or others. For example, while the business plan reflects that the company's targets are low-income households and senior citizens, the Petitioner later also states he will build properties for medium-income families. In short, the record as it currently stands does not make clear who the proposed endeavor stands to benefit.

The Petitioner's proposed endeavor, as described, is expansive and includes, even within its main components, activities such as: hiring and training his staff; finding, developing, and renovating properties; offering property management services; providing residential senior care; offering financial assistance services; and offering real estate investment services. The Petitioner has not adequately explained whether he plans to perform these activities concurrently or consecutively, or how much time he will devote to each activity. Even considering he will hire employees to assist him, any one of these activities could constitute a full-time job. The Petitioner has not provided sufficient detail on how he specifically plans to accomplish any one of these components of his endeavor, much less all of them. This information is material, as each of these activities would necessarily produce different impacts. For instance, the Petitioner's activities managing senior care services would be different from his activities providing financial assistance services, which would also differ from engaging in real estate development. Yet, each of these activities appear equally possible under the proposed endeavor, as described.

We acknowledge the importance of affordable, workforce, and senior housing and do not question the merits of developing such properties. However, the Petitioner has not sufficiently explained in adequate detail the specifics of his proposed endeavor, including how he plans to accomplish it, in order to meet his burden to demonstrate his proposed endeavor rises to the level of national importance.

But, even if we were to set aside the deficiencies discussed above and look at the evidence submitted, the record would still be insufficient to support the Petitioner's claims of his endeavor's national importance. For instance, the Petitioner has not adequately explained how his proposed endeavor would be different from, or an improvement over, other affordable housing development projects, particularly in Florida (assuming affordable housing would, in fact, be one of the endeavor's foci). Although he briefly mentioned his intention to use prefabricated modular construction technology, which he claims would provide his company with a "considerable advantage" in production speed and cost, he has provided little explanation regarding how he would implement this plan, including for example, where he would build these units within [redacted]

Moreover, as referenced in the Petitioner's professional plan, Florida is "one of the fastest-growing real estate markets in the United States" with significant housing shortages. The Petitioner contends

his endeavor will "revitalize U.S. neighborhoods, supply the demand for affordable housing solutions, reduce homelessness in the country, and bring highly beneficial economic benefits to the overall U.S. economy." However, the Petitioner has provided little detail on how he will specifically accomplish these objectives in Florida's competitive market. For example, while the business plan states he will purchase land to construct affordable housing in [redacted] and its surrounding areas, there is little evidence in the record that he has identified any property, purchased any property, or otherwise pointed to any meaningful steps taken in his endeavor to develop affordable housing units.[4] Although the business plan states that the Petitioner's company will develop 60 workforce housing units in [redacted] Florida in 2023, and 180 workforce and affordable housing units in 2024, and will have hired 13 employees by 2024, the Petitioner has provided little documentary evidence to support these claims of beneficial economic and societal impacts his endeavor would reportedly have. Likewise, while the Petitioner alleges that he will personally invest $250,000 into his company, he has not corroborated his assertion.[5] General conclusory statements, without more, are insufficient to carry the Petitioner's burden of proof. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Again, without more information about the Petitioner's specific proposed endeavor, including how he plans to implement it in the United States, the Petitioner has not adequately established his proposed endeavor in a manner sufficient for us to determine that his work in the United States would have national importance. In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether it meets the national importance requirement under *Dhanasar's* first prong. It is the Petitioner's burden to prove by a preponderance of evidence that he is qualified for the benefit sought and that burden has not been met here. *Id.* at 375.

Finally, while we acknowledge the Petitioner's appellate arguments, they do not persuade us of any error in the Director's decision or that the Petitioner has, in fact, established eligibility for a national interest waiver. On appeal, the Petitioner asserts, among other things, that the Director erroneously applied a "higher standard of proof," disregarded the evidence, and did not properly analyze the totality of the record. He also alleges that the Director "arbitrarily and capriciously" ignored two expert opinions and generally erred in finding the Petitioner's proposed endeavor was not nationally important.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Id.* at 375-76. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376. Here, we find no error in the Director's evaluation of the record. The Director

[4] Although the Petitioner submitted several real estate development proposals, they appear to have been created as part of a graduate degree project and not in relation to his proposed endeavor. However, even if we were to take them into account, there is little evidence these proposals have been meaningfully considered or accepted for development by any stakeholders.

[5] This also has implications for determining how well-positioned the Petitioner is for the purposes of satisfying *Dhanasar's* second prong. Because the petition cannot be approved for the above stated reasons, we will not address the second prong further, other than to place the Petitioner on notice that he should be prepared to address this in any future filings.

properly considered and weighed all the evidence, but appropriately concluded that the Petitioner did not establish his proposed endeavor's national importance.

We are also unpersuaded by the Petitioner's contention that, because the Director did not raise grounds to contest the authority of the experts' opinions, we should defer to it. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*

In this case, the Director considered the expert opinion letters submitted by Dr. [redacted], an associate professor at [redacted], and [redacted], a clinical associate professor at [redacted] but did not find they were sufficient, alone, to demonstrate the proposed endeavor's national importance. We agree. As explained above, the Petitioner's proposed endeavor is not sufficiently clear or detailed in how he will specifically accomplish his broad objectives to "strengthen the U.S. housing market and alleviate the housing shortage in the U.S., improving the overall quality of life in the specific communities across the nation." While the letters address the importance of affordable and senior housing and so broadly speculate that the Petitioner's work in these areas would be nationally important, without more, the letters in and of themselves do not provide adequate corroborating evidence to support the endeavor's alleged broader impacts to the industry, economy, or nation.

Because the Petitioner has not provided sufficient information regarding his proposed endeavor, we cannot conclude that he meets *Dhanasar's* first prong. Since the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues and arguments concerning whether he has established eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We, therefore, conclude that the Petitioner has not established that he is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.