U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30040812

Date: JAN. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference (EB-2) immigrant, 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 record did not establish that the Petitioner is eligible for a national interest waiver. The matter is now before us on appeal. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

- 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.

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

A. EB-2 Classification

In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. We observe that the Director presented contradictory conclusions in her request for evidence (RFE) regarding whether the Petitioner qualifies for the EB-2 classification. In denying the petition, the Director did not provide a determination addressing whether the Petitioner submitted evidence sufficient to show that he qualifies for this classification.

As discussed below, the Petitioner has not presented adequate reasons or evidence on appeal to overcome the Director's determination that he is ineligible for a national interest waiver, as a matter of discretion. Therefore, we need not remand the matter to the Director to determine his eligibility for the EB-2 classification. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve this issue. *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).

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director concluded that the Petitioner did not meet any of the three prongs of the *Dhanasar* framework. In deciding whether an individual qualifies for a national interest waiver, we must rely on the *specific* proposed endeavor to determine whether it has both substantial merit and national importance. Based on our de novo review of the record, we agree with the Director that the Petitioner has not established his eligibility under *Dhanasar's* first prong. While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner intends to work as a public relations specialist, initially describing his proposed endeavor, as follows:

> I intend to continue by activities as a public relations specialist, utilizing all of the knowledge I acquired in programs and courses, along with my professional experience, which have considerably contributed towards the successful development of my work in an efficient manner, guaranteeing the best results. I also intend in improving my performance by taking new courses according to the demand in the field, which is constantly evolving.

While he provided general information about the benefits of his occupation to the nation, he did not provide sufficient specific information about how he will conduct his endeavor. The initial filing

included, among other materials, an expert opinion letter from professor Q- who opines that the Petitioner meets the requirements of the *Dhanasar* test. Professor Q- discusses aspects of the Petitioner's occupation and provides this generalized information about his endeavor:

> [The Petitioner's] proposed endeavor to provide services in the U.S. is in demand and of national importance. Generally, public relations consultant uses press releases, newsletters and brochures to relay information to the media and the public on behalf of the company, organization or person they work for. They present the public face of their client and try to maintain or improve their public image.

The analysis in professor Q-'s letter is not specific to the Petitioner's actual endeavor. Instead, he states that the Petitioner qualifies for *Dhanasar's* first prong because "[t]he United States would greatly benefit from the expertise and skills of an experienced [p]ublic [r]elations [c]onsultant such as [the Petitioner], who has extensive knowledge and expertise in all aspects of communication strategies, public relations, marketing, and project management." As a matter of discretion, we may use expert opinion letters submitted by a petitioner as advisory testimony. However, USCIS is responsible for making the final determination regarding eligibility for the benefit sought. Where an opinion letter is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, the analysis offered in professor Q-'s letter is largely limited to general observations about the Petitioner's qualifications and the occupation and industry in which he will work. Professor Q- does not offer an analytical roadmap that lays out the basis for his opinion that the Petitioner meets *Dhanasar's* first prong. We conclude the opinion letter provided lends little probative value to the matter here. *Matter of Chaw*athe, 25 I&N Dec. at 376.

The initial evidence did not offer specific information about the nature of the proposed endeavor beyond vaguely stating that the Petitioner would employ his public relations expertise with U.S. companies, and that those employed in this occupation benefit companies and their customers. The Director issued an RFE requesting documentation showing the actual nature of the Petitioner's proposed endeavor and how it would have substantial merit and be of national importance. While the Petitioner provided additional explanations in the RFE response, we conclude that he did not sufficiently address these aspects.

The Petitioner offered evidence, including a professional plan, recommendation letters, and documentation regarding the economic benefits of public relations and immigrant labor and investment. The Director reviewed the record and ultimately denied the petition, concluding the evidence did not establish that the Petitioner's endeavor has substantial merit or that it would have economic or other impacts rising to the level of national importance. On appeal, the Petitioner asserts that the Director did not properly consider the evidence or explain the reasons for his adverse determinations. We disagree.

We acknowledge the various documents the Petitioner provided regarding the importance of his industry and occupation. However, when determining whether a proposed endeavor would have

substantial merit or national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889-890. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("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.") As noted by the Director, simply being employed in an occupation does not constitute an endeavor for the purposes of these proceedings. *Id.*

Although the Petitioner's statements and other evidence, such as letters from prospective employers suggesting that he is qualified for hire in a public relations role, reflect his intention to continue working in the public relations industry in the United States, he has not offered sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance. 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. Even if the Petitioner's endeavor were in an area of substantial merit, he has not established its national importance because he has not provided sufficient documentation of its prospective impact on his field. *Id.* Similarly, the record in this matter does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently impact U.S. interests or the public relations industry more broadly at a level commensurate with national importance.

In addition, he has not demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. For example, on appeal the Petitioner puts forth vague assertions stating (verbatim) that he "will act as the leader of the marketing solutions sector to command the relationship and engagement with the public of the corporate complex. With this project, he will create a solid foundation for building a brand reputation through his management, management, and engagement skills to integrate operations with excellence." But the Petitioner did not submit plans or offer explanations sufficient to address *how* he would provide such services to U.S. companies in order to illustrate that the prospective impact of his public relations-related activities would rise to the level of national importance.

On appeal, the Petitioner also points to previously submitted letters of support which discuss his knowledge, skills, and work experience. The Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has substantial merit and national importance under *Dhanasar*'s first prong.

While we have considered the submitted letters, we conclude that they do not sufficiently explain the substantial merit and national importance of his specific endeavor under *Dhanasar*'s first prong. For instance, the letter from [redacted] (F-), discusses aspects of the Petitioner's work abroad as a public relations manager, noting that "[t]he engagement generated by [the Petitioner] enable new business opportunities for [his employer abroad], considering his unique management capacity, advanced business techniques and good understanding of the market." F- asserts that the Petitioner

"[i]s a professional with advanced techniques and a lot of dedication to his work; therefore, there is no doubt in my mind that we are talking about someone remarkable in his field." In his letter, F- is complimentary about the Petitioner's business acumen and work ethic, but he does not describe what his prospective endeavor will specifically entail and how it will benefit our nation. Without more, the Petitioner has not established his proposed endeavor sufficient for us to determine that his work in the United States will have substantial merit and national importance. It is the Petitioner's burden to prove by a preponderance of evidence that he is qualified for the benefit sought. *Chawathe*, *supra*. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id*. The Petitioner has not done so here.

Because the Petitioner has not provided sufficient information regarding his proposed endeavor, we cannot conclude that he meets the first prong of the *Dhanasar* precedent. Accordingly, he has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. at 516. The petition will remain denied.

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. As such, we conclude that he 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.