U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29340013

Date: JAN. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies for the EB-2 classification, the record did not establish that a waiver of the job offer requirement is in the national interest. 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.

Once a petitioner demonstrates eligibility for the EB-2 classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[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).

- 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.

II. ANALYSIS

The Director found that the Petitioner qualifies as an advanced degree professional based upon obtaining the foreign equivalent of a bachelor's degree in economics and more than five years of progressive experience in his specialty.[2] The Director also found that the Petitioner established the substantial merit of the proposed endeavor. However, the Director concluded that the Petitioner did not demonstrate the national importance of the proposed endeavor, that he is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States. On appeal, the Petitioner submits a brief in which he asserts that he has established eligibility for a national interest waiver.

As to the Petitioner's proposed endeavor, he states:

> My proposed endeavor is to build on my extensive experience with innovative and affordable designs for housing solutions for people [without] decent home[s] and to preserve life from catastrophes with secure living designs in order to minimize the homeless population in [the United States] and prevent the human losses when the situation or any event arrives.

The Petitioner states that he has many years of experience in the construction industry, with a particular interest in using innovative and alternative construction methods to reduce costs and environmental impacts. For example, the Petitioner describes using recycled cargo containers as an alternative housing option for low-income and homeless individuals or for temporary housing after natural disasters. The Petitioner states that he will circulate his work through the field with a YouTube channel, presentations, fairs, and publications, and has he has founded a company to begin to design and build alternative housing.

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director specifically found that the evidence relating occupational shortages in the field did not, by itself, demonstrate the potential impact of the proposed endeavor. The Director also found that the evidence of the Petitioner's experience and expertise, while potentially useful to a prospective customer or employer, similarly did not sufficiently demonstrate the potential impact of the endeavor. Finally, the Director concluded that the Petitioner did not demonstrate the potential economic benefits of the proposed endeavor, noting that the Petitioner did not submit a detailed business plan or other sufficient evidence to illustrate the number of individuals that the Petitioner intends to hire, train, and support or the potential revenue of the endeavor. Overall, the Director concluded that the evidence did not demonstrate that the proposed endeavor stands to sufficiently affect or advance the field at a level commensurate with national importance, nor that it has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects.

[2] The Petitioner submitted evidence demonstrating that after he obtained his bachelor's degree, he worked as a general manager in a construction business.

On appeal, the Petitioner first contends that the Director erred by finding the lack of a business plan to be relevant to the national importance analysis, stating that a "model or plan for future activities" should instead be considered under the second prong of the *Dhanasar* framework. The Petitioner claims that this amounts to imposing "a novel or unique requirement" to the first *Dhanasar* prong that is outside what our decision in *Matter of Dhanasar* requires and is therefore an abuse of discretion.

We agree that a petitioner's model or plan for future activities is relevant to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether they are well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. But we disagree that the Director abused their discretion by considering the lack of a business plan as part of the first prong analysis. The Director's decision did not state or imply that a detailed business plan is required for a finding of national importance. Rather, the Director concluded that the Petitioner did not submit "a detailed business plan, sufficient information, or evidence to illustrate the number of individuals (if any) he plans to hire, train and support, or the amount of revenue his endeavor will generate," as part of the finding that the Petitioner had not sufficiently established the potential economic benefits of the proposed endeavor. The Director's consideration of whether the record demonstrates that the proposed endeavor may create jobs or generate revenue is appropriate in the national importance analysis and in line with our decision in *Matter of Dhanasar*. *See id.* at 889. We conclude, therefore, that the Director did not impose a novel requirement that is not present in our precedent decision.

The Petitioner next asserts that the Director abused discretion by failing to contemplate or discuss all of the evidence submitted. The Petitioner asserts that, contrary to the Director's conclusions, he has submitted objective, documentary evidence to establish the proposed endeavor's national importance and that the Director did not examine the entirety of the record. The Petitioner states that the failure to consider all the relevant evidence submitted has been found to be an abuse of discretion and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mi. 1994). While we agree that an adjudicator should consider the relevant evidence in the record,[3] we also note that U.S. district court decisions, such as the one the Petitioner cites, are not binding precedential authority. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). More importantly, however, the Petitioner does not sufficiently support the claim that there was relevant evidence that the Director did not consider.

In support this claim, the Petitioner states the petition included "evidence from reputable industry and U.S. government sources," such as information about the 1968 Civil Rights Acts, a 2021 memorandum from the U.S. Secretary of Housing and Urban Development regarding the federal government's role in promoting fair housing, and the announcement by the U.S. Department of Housing and Urban Development to allocate nearly $5 billion to help communities create affordable housing. The Petitioner claims that the proposed endeavor is therefore in line with the agency's stated priorities. The Petitioner also cites to the evidence in the record from the National Low Income Housing Coalition regarding the national lack of affordable housing, a report on the state of the nation's housing from Harvard University, and articles from Insider, the Guardian, and the Joint Center for Housing

[3] *See* 8 C.F.R. § 103.2(b)(1).

Studies about affordable housing. The Petitioner claims that this evidence establishes the national importance of the proposed endeavor but was not considered by the Director.

But the Director acknowledged that the Petitioner submitted reports and articles that discuss the housing shortage in the United States, the related problems that stem from that shortage, the barriers to building affordable housing, and the potential solutions to those problems. The Director also discussed the Petitioner's claim that his endeavor, which aims to combat the housing crisis, aligns with social and environmental priorities in the United States. While the Director may not have specifically named each piece of evidence in the record, this is not indicative of a failure to consider the evidence. *See Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention."). *See also Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (joining the Seventh and the Federal Circuit Courts of Appeals in presuming that the Board reviewed all of the evidence of record). Therefore, we do not find sufficient support for the Petitioner's claim that the Director failed to consider all of the evidence in the record.

Moreover, upon de novo review of the record, we agree with the Director that the articles, reports, and evidence of government agency priorities submitted by the Petitioner do not establish the endeavor's national importance. These articles provide background information about homelessness and housing shortages in the United States and some of the societal issues that stem from a lack of affordable housing. However, this evidence relates only to the housing and construction sector in general and not the Petitioner's specific proposed endeavor. We agree with the Director that in determining whether a proposed endeavor has 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." *See Matter of Dhanasar*, 26 I&N Dec. at 889. These articles and reports do not discuss the Petitioner's specific proposed endeavor, do not help demonstrate the potential prospective impact of the endeavor on the problem of housing affordability and homelessness, and do not otherwise demonstrate the national importance of the endeavor.

Finally, the Petitioner makes the broad claim that the record contains "ample evidence in the form of both testimonial and objective documentary evidence" to establish the national importance of the proposed endeavor based upon its economic and social welfare benefits. But the Petitioner does not describe the specific evidence that demonstrates these benefits. The objective documentary evidence in the record, such as the articles and reports discussed above, do not reference the Petitioner's proposed endeavor and do not sufficiently demonstrate the national importance of the endeavor. As to testimonial evidence, the record contains several recommendation and support letters. For example, the Petitioner submitted a recommendation letter from a professional associate who speaks highly of the Petitioner's knowledge and professionalism and states the opinion that the Petitioner's project will be a success. The record also contains support letters, such as a letter from a plant manager expressing interest in working with the Petitioner to repair and restore structures at the company's plant. While these letters may be helpful in showing that the Petitioner is respected by his colleagues, they do not sufficiently analyze the proposed endeavor or offer evidence of its potential impact. Contrary to the

Petitioner's broad claim otherwise, we conclude that the record does not contain sufficient evidence to establish that the effects of his proposed endeavor may rise to the level of national importance.

Because the documentation in the record does not demonstrate the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner 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) (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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. 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.