U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29339509

Date: JAN. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a consultant in the fields of architecture and sustainable construction project management, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* 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 that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act.

The Director of the Texas Service Center denied the petition. The Director determined the Petitioner qualifies for EB-2 classification as an advanced degree professional but concluded that he did not establish his eligibility 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. An advanced degree is defined, in part, as any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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:

- 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 determined that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree and the record supports this conclusion.[2] Accordingly, the sole issue to be addressed on appeal is whether the Petitioner has established that a waiver of job offer requirement, and thus a labor certification, would be in the national interest.

The Director concluded that the Petitioner demonstrated the substantial merit of his proposed endeavor under the first prong of the *Dhanasar* framework but concluded that he did not establish the proposed endeavor's national importance.[3] On appeal, the Petitioner submits additional evidence and a brief in which he asserts that he has established, by a preponderance of the evidence, his eligibility for a national interest waiver.

For the reasons provided below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor and therefore has not established that he merits, as a matter of discretion, a national interest waiver of the job offer requirement. While we do not discuss all submitted evidentiary exhibits individually, we have reviewed and considered each one.

A. The Proposed Endeavor

The Petitioner is an architect and sustainable construction project manager who had approximately 14 years of professional experience in the field at the time of filing. He has a master's degree in architectural project management, a bachelor's degree in architecture, and postgraduate diplomas in project management, land markets and policy, and sustainable construction management. In addition, the Petitioner provided evidence that he possesses a Project Management Professional (PMP) qualification and is a [redacted][4] Accredited Professional in Homes and Building Design and Construction.

In a statement submitted with the petition, the Petitioner indicated his intent to establish a Florida-based "professional consulting practice in the fields of Architecture and Sustainable Construction

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[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).

[2] The Petitioner, who completed a master's degree in architectural project management at a United Kingdom university, established that his foreign degree is equivalent to a U.S. master's degree. *See* 8 C.F.R. 204.5(k)(2) (defining "advanced degree").

[3] Although the Director's decision did not include determinations regarding the Petitioner's eligibility under the second and third *Dhanasar* prongs, we note that the Director stated in their request for evidence that "the evidence submitted demonstrates the petitioner is well-positioned to advance the proposed endeavor."

[4] [redacted] is a [redacted] certification and rating system developed by [redacted].

project Management," noting that he would "provide a range of solutions for individual, corporate and government clients." The Petitioner explained that the focus of his consulting services will be "to enhance the environmental, social and economic performance of real estate projects and their broader impact on the environment and the community . . . through a structured roadmap following [redacted] guidelines and encouraging project certification." He further stated he would be "helping government agencies to plan, create, and develop strategies to effectively incentivize sustainable construction." Finally, the Petitioner stated he would provide training to other professionals and team members "so they can achieve their own [redacted] professional accreditation and become replicators of sustainable construction practices" which would lead to "the usage and implementation of the [redacted] system on more and more projects."

In response to the Director's request for a more detailed description of the proposed endeavor, the Petitioner stated his proposed professional consulting practice is intended "to facilitate the wider adoption of Sustainable Construction techniques in more segments of the market and maximize their overall benefit for the U.S. and the world." He stated that his work will "support advancements in [the] field by working with industry leaders to influence major adoption and replication of these practices."

Finally, the Petitioner mentioned that his practice will create direct jobs for "assistants, engineers, commissioning agents, drafters, project document administrators, etc." He further stated that "any new Sustainable Construction project is a source of skilled well-paid jobs, and my duty is to influence and advance their market penetration to transform what otherwise would be a traditional project, thus indirectly making way to job creation in industrial scales."

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner established the substantial merit of his proposed endeavor, but not its national importance. Specifically, the Director concluded that the evidence did not convey an understanding of how the Petitioner's proposed endeavor stands to have broader implications in his field. The Director acknowledged evidence establishing the importance of sustainable construction practices and their economic, environmental, and societal impacts, but noted that, in determining national importance, the relevant focus is not on the industry, field or profession in which the individual will work, but rather on the specific endeavor they propose to undertake. They concluded that "while the petitioner's intent may be to impact the broader field/industry by providing his consulting services, the past record and the potential prospective impact of the proposed endeavor point to a limited impact within the companies and/or clients that engage the petitioner for his consulting services" and therefore the record "does not support the petitioner's proposed endeavor will influence the architecture and sustainable construction field/industry." In addition, the Director determined that the record lacked evidence to establish "a strong connection between the proposed

endeavor activities" and any substantial positive economic effects on a level commensurate with national importance.

On appeal, the Petitioner asserts that the Director "misinterprets the spirt of my endeavor as being a mere professional practice within the field of Sustainable Architecture," noting that beyond providing consulting services, his endeavor is "to advance Sustainable Construction practices within the overall Construction Industry." The Petitioner also maintains that the Director placed undue focus on the direct economic impact and job creation aspects of the proposed endeavor, and in doing so, overlooked other relevant evidence and factors that establish its national importance under *Dhanasar*'s first prong. He contends that "creating jobs was never a main or constitutive part of my endeavor," but rather his intent is "to advance sustainable construction to a bigger market share in the whole of the construction industry" as an "agent of change" who will advance improved design and building practices in the broader field.

The record includes media articles, government publications, and industry reports that establish the U.S. government's commitment to significantly reducing greenhouse gas emissions by the year 2050 in accordance with The Paris Agreement. This evidence details federal government initiatives that aim to achieve this goal, the negative environmental impacts of the traditional construction industry, the significant benefits of adopting sustainable construction practices and standards, and the industry's progress in adopting these standards. The submitted articles also explain how a reduction in carbon emissions will not only have important environmental impacts, but also significant benefits for societal welfare, public health, and the economy. This evidence supports the Director's determination that the Petitioner's proposed endeavor to provide consulting services in the sustainable construction management field has substantial merit.

However, as noted by the Director, in evaluating national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. Therefore, while we recognize the important role of sustainable construction project managers in helping to reduce the negative environmental consequences of building and construction projects, the Petitioner's intent to work in this field alone is not sufficient to establish the national importance of his specific proposed endeavor. We also acknowledge the Petitioner's assertion that his proposed endeavor "is specifically in line with the advancement of government and . . . industry goals" pertaining to the wider adoption of sustainable construction practices. Nevertheless, we must still evaluate the potential prospective impact of the endeavor based on the factors set forth in *Dhanasar* to ensure that the potential prospective impact of his work is commensurate with the first prong's national importance requirement; the fact that the Petitioner works in a profession or field that is aligned with national initiatives is not sufficient to establish his eligibility under the first prong.

An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner indicates that the potential prospective impact of his work is related to the advancement and increased market penetration of sustainable construction practices within the overall construction industry, and therefore has broad implications for his field. Specifically, the Petitioner states that, beyond working as a consultant providing architectural and

project management services to clients on sustainable building and construction projects, he will be using his influence to advance improvements in the broader industry. In this regard, he states that his "endeavor to make Sustainable Construction practices more adopted and replicable constitutes in itself an improvement of traditional manufacturing practices of the Construction Industry" and is sufficient to meet *Dhanasar's* national importance requirement. The Petitioner maintains that the Director disregarded evidence intended to show "how my endeavor indeed represents an improvement in the Construction Industry's manufacturing processes," and "how my influence in national U.S. organizations allows me to be an agent of change with professional initiatives toward this goal." He asserts that "there is no doubt about my position as an agent of change and influence in the broader industry."

The record, which contains supporting letters from the Petitioner's past colleagues and clients, establishes that he is an experienced architect and sustainable construction project manager who enjoys a strong reputation in his field and whose work and subject matter expertise is highly regarded by those who have worked with him in the past. Evidence of a petitioner's skills, expertise, and record of success generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [petitioner]" and whether they are well-positioned to advance it. *Dhanasar*, 26 I&N Dec. at 889. A determination regarding the claimed national importance of a specific proposed endeavor generally cannot be inferred based on the Petitioner's past achievements, just as it cannot be inferred based on general claims about the importance of a given field or industry.

The Petitioner also submits evidence that he has been consulting remotely on more than a dozen architecture and construction projects in the United States that are being designed and implemented according to [redacted] standards. However, the record does not contain sufficient evidence to demonstrate how his specific proposed endeavor would have the influence to result in industry-wide improvements in construction industry practices at a level commensurate with national importance. The Petitioner did not, for instance, elaborate on his claim that he enjoys a level of influence within "National U.S. organizations" that would allow him to act as an "agent of change" in the market or significantly impact the prevalence of sustainable building practices in the U.S. construction industry.

In his initial statement, the Petitioner indicated that beyond proving consulting services to clients in the U.S. building and construction sector, he will be: (1) "helping government agencies to plan, create and develop strategies to effectively incentivize sustainable construction"; and (2) sharing his knowledge by "training other professionals and team members so they can achieve their own [redacted] professional accreditation and become replicators of sustainable construction practices." While the Petitioner described in detail the nature of the consulting services he can provide to U.S. clients, he did not further explain or document how he proposes to assist with shaping and developing government strategies regarding sustainable construction in the United States or the specific government agencies with which he would collaborate. Similarly, while it is evident that the Petitioner may provide job-related training to any employees eventually hired by consulting practice, he did not elaborate on the knowledge sharing component of his proposed endeavor or provide an evidentiary basis to support that his training-related activities would result in a substantial increase in the number of [redacted] accredited professionals in the United States or would otherwise have broad implications for his field. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level

of having national importance because they would not extend beyond his students to impact his field more broadly. *Dhanasar*, 26 I&N Dec. at 893.

In response to the Director's RFE, the Petitioner emphasized that he is "well positioned as a trusted driver for decision makers to adopt measures as big as the scale allows in each segment: be it developers, builders, government bodies, academic institutions, etc." He explained that his work "will facilitate the wider adoption of Sustainable Construction techniques in more segments of the market" and that he "will continue to support advancements in [the] field by working with industry leaders to influence major adoption and replication of these practices and replicating knowledge." While the Petitioner claimed an influence on industry leaders and decision-makers that would extend beyond his future clients' projects and have broad implications in his field, he provided insufficient explanation and evidence to support how his proposed endeavor would provide a platform for this type of sweeping influence.

As noted, on appeal, the Petitioner continues to emphasize his "influence in national U.S. organizations" and states there is "no doubt about my position as an agent of change and influence in the broader industry." He asserts that he has shown his level of influence through his past projects, highlighting a 2013 project called [redacted] which was the first [redacted] certified residential building in Latin America. The record contains a letter from E-P-S-, who asserts he hired the Petitioner as a consultant on the project. In his letter, E-P-S- explains that he initially encountered obstacles in obtaining the desired [redacted] certification for his project because, at the time, the [redacted] rating system was only available outside the United States for projects accepted into an international pilot program. He emphasizes that the Petitioner, who holds a [redacted] certification, was able to get the project accepted into this program after other consultants had failed to do so. The Petitioner emphasizes in his appellate brief that there were only a handful of projects accepted into this [redacted] in 2013, but as of 2022, there were more than 1250 certified projects outside the U.S., representing a "6400% increase in 10 years."

While the record supports the Petitioner's assertion that he facilitated the acceptance of the [redacted] project in the [redacted], it does not support his suggestion that the overall increase in [redacted] certified projects outside the United States is attributable to his consulting work on this project. Further, the record does not show how any influence he may have exercised to advance [redacted] certification of the [redacted] project in 2013 would carry over to his planned activities in the current U.S. market, where [redacted]-certified practices have been well-established for quite some time. For example, the record contains evidence that both the Government Services Administration and U.S. Army adopted [redacted] standards for all buildings and facilities in 2006. According to a supporting letter of interest from one of the Petitioner's potential consulting clients in the United States, "it is practically required to have on the team professionals proficient in [environmental sustainability]" as of 2022.

With respect to his planned activities in the United States, the evidence submitted on appeal corroborates the Petitioner's previous statement that he has been performing remote consulting work for more than a dozen U.S.-based projects that are mainly at early stages in the [redacted] certification process. However, he has not explained how his involvement as a consultant on these projects establishes his role as an "agent of change" who will significantly advance design and building practices in the overall U.S. construction industry. The record contains little evidence regarding these

projects other than their names and locations. The Petitioner does not elaborate on his previous assertions that his endeavor will allow him to exercise influence over decision-makers in government and industry, or his claim that he would be promoting advancements that would have a significant, industry-wide impact on adoption of sustainable construction practices. Without such evidence, the record does not establish that the proposed endeavor will have broad implications for the industry consistent with national importance.

Finally, the Petitioner maintains that his proposed endeavor will have indirect, ripple effects on the economy as well as environmental benefits that will enhance societal welfare, emphasizing that such impacts would extend well beyond his own consulting practice and its clients. He notes that he previously submitted "quantifiable evidence" of the importance of a single project employing sustainable construction practices. He refers to a statement he submitted in response to the Director's RFE, in which he used the USCIS Texas Service Center facility as a hypothetical example. In that example, he explained how the incorporation of [redacted] practices in the design and construction of the USCIS facility would have resulted in significant conservation of water and energy resources, reduction of waste, improvements in worker health and productivity, and cost savings that ultimately could have been passed on to taxpayers. The economic, environmental, and societal benefits of employing sustainable construction practices over traditional practices is well-established in the record and is not at issue. The question is whether the Petitioner's specific proposed endeavor as a consultant in the sustainable construction field, would have impacts in these areas that are commensurate with national importance. The Petitioner relies on a hypothetical example, but has not, for instance, quantified the impact of the U.S.-based projects that he is working on or described the nature of his contributions to those projects in support of his claim that a typical consultant in his field, who according to the Petitioner would typically work on 20 projects annually, is able to have environmental, economic and societal impacts on a scale consistent with national importance.

Finally, the Petitioner asserts that the facts of his case are comparable to the facts in *In re* 46885, 2017 WL 1281865 (AAO Mar. 20, 2017), a national interest waiver case in which a metallurgical engineer established eligibility by demonstrating the impact of his work would extend beyond the mine where he worked to affect the mining industry, the economy and the environment more broadly. First, we note that this decision was not published as precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(e). Second, the facts in the cited decision are distinguishable from those before us in this case. In the cited case, the petitioner provided documentation establishing that the mine where he worked operated on such a scale that his work affected the U.S. mining industry as a whole. *In re* 46885, 2017 WL 1281865, at *3-4. Further, the petitioner had provided documentation of novel mining processes he had developed, specific projects he proposed to lead to implement those processes, and the potential impact of those projects on the broader industry. *Id.* The record also contained letters from colleagues and professors in the field affirming that the petitioner was positioned to significantly influence industry-wide mining practices that would exponentially reduce pollution as other companies that adopted his novel methods.

By contrast, the Petitioner has not explained with specificity what his U.S. projects will entail, provided an evidentiary basis for his claimed level of influence among leaders and decision-makers in the field, nor identified any specific advancement or innovation that the endeavor will bring to his field; rather, he indicates that he will seek to increase the market share of existing sustainable building practices. While we do not question that sustainable construction projects, regardless of their size,

have environmental, economic and even societal benefits, it is the Petitioner's burden to establish that the potential positive impacts of his endeavor will be on a scale commensurate with national importance. For the reasons discussed above, the Petitioner has not met this burden.

Because the documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs. *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 he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.