U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28963551

Date: JAN. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an aeronautical 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, concluding that the record did not establish that the Petitioner merited a national interest waiver as a matter of discretion. 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 any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. [If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. (delete if doctorate not an issue)] 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the 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 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
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. Eligibility for the EB-2 Classification

The Director determined that the Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree, based upon his degree in aeronautical engineering and evidence of more than five years of progressive, post-baccalaureate work in this field. Thus the sole issue on appeal is whether the Petitioner merits a national interest waiver of the EB-2 classification's job offer requirement as a matter of discretion. We agree with the Director's conclusion that he does not.

B. The Proposed Endeavor

The Petitioner is an aeronautical engineer who initially proposed "to offer [his] expertise to advise American and U.S.-based aviation manufacturers on how to successfully grow, all while following strict aircraft maintenance and safety rules." He clarified in his initial statement that he intended to pursue this endeavor through his "continued functions" at his then and current employer in the U.S., a foreign-based manufacturer of executive aircraft. However, when the Petitioner submitted his response to the Director's request for evidence (RFE), he submitted his plans for a new proposed endeavor: leading and managing, as founder and CEO, a company in the United States which would provide aircraft maintenance management, inspection, and valuation services.

The purpose of an RFE is to notify a petitioner of deficiencies in the evidence initially submitted, and to allow for a limited period for response and submission of additional evidence. 8 C.F.R. §§ 103.2(b)(8) and (11). Here, the Petitioner's initial description of his proposed endeavor did not include plans to form his own company as an entrepreneur and manage that company as its CEO. The Petitioner has not shown that working for a company to advise on its aviation products, their marketing, and aircraft maintenance and safety rules, and forming and managing his own company are the same endeavor. We conclude that the RFE response presented a new set of facts regarding the Petitioner's proposed endeavor. As a petitioner's proposed endeavor forms the core of our analysis under the *Dhanasar* framework, it is material to eligibility for a national interest waiver. A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

[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).

In addition, we note that the Petitioner's company was formed more than four months after the filing of his petition, and the business plan for this company is dated more than two years after the petition was filed. A petitioner must meet eligibility requirements for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's plans to establish a new company and perform services as a CEO for this entity, formed after the filing date, cannot retroactively establish eligibility. For both of the reasons given above, we will not consider the Petitioner's newly proposed endeavor in our decision regarding his eligibility for a national interest waiver, but focus on his originally proposed endeavor.

C. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, 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. *Dhanasar*, 26 I&N Dec. at 889.

Here, the Director concluded that the Petitioner's proposed endeavor is of substantial merit. We agree that the evidence is sufficient to show the substantial merit of the proposed endeavor in the area of business.

Turning to the national importance requirement, the Petitioner stated that his work for his current employer helped it to gain further ground in the U.S. market, thus producing economic gains for the State of Florida, where its U.S. headquarters are located, as well as at the national level. He provided materials noting that his employer is the third-largest aircraft manufacturer in the world, as well as articles about its economic impact in Florida. In addition, a letter from the company stated that the Petitioner's position as a marketing analyst was an "essential component of our product strategy department," and that his contributions had improved "the company's position and competitive market standing."

In evaluating the national importance of a petitioner's proposed endeavor, we look for broader implications in the field or industry. An endeavor may be of national importance if it has substantial positive economic effects, such as a significant potential to employ U.S. workers, particularly in an economically depressed area. *Id.* at 889-890. Here, although the evidence indicates that the Petitioner's employer has made a substantial positive economic impact in Florida through job creation, it does not establish that the implications of the Petitioner's specific proposed endeavor as one employee of this company extends beyond the company itself to the broader industry or field. His work may allow his employer to better compete in a competitive market, but he has not shown that this would directly result in an overall net economic gain at a broader level, or a that his specific work would result in a significant potential to employ U.S. workers, even at a local level.

On appeal, the Petitioner mainly relies upon his proposed work in leading his company to argue for the national importance of his endeavor.[2] He first asserts that this work would extend beyond

[2] The Petitioner's appellate brief devotes several pages to arguments concerning the auto industry, and also makes several

individual employers to indirectly benefit the entire aviation industry, in that he would be improving maintenance practices and operations. We first note that this argument does not address the deficiencies in his initial proposed endeavor regarding national importance, as explained above. But we also note that, even if we were to consider his second proposed endeavor, the Petitioner's statement and business plan do not describe how he would improve upon existing aircraft maintenance practices and operations, or how any such improvements would be dispersed to impact the broader aviation maintenance industry. While the Petitioner's appeal brief includes mentions of training mechanics, technicians, and others in the industry, the business plan lacks mention of training programs that would extend beyond his own company.

The Petitioner also states on appeal that he has collected additional letters of support from peers, professional organizations, and government entities in response to the Director's decision, but no such evidence was submitted with his brief. Also, while the Director discussed letters of support that were submitted in the context of the national importance of the proposed endeavor, these letters primarily focus on the Petitioner's work experience and career achievements, factors that are weighed under the second prong of the *Dhanasar* analytical framework. Any such additional letters would be of little evidentiary value in demonstrating the national importance of the Petitioner's proposed endeavor.

The Petitioner's initial proposal, to work for his current employer in the United States, was not supported by sufficient evidence of its national importance under the first prong of the *Dhanasar* analytical framework, and his abandonment of this proposed endeavor in favor of a new one when responding to the Director's RFE was an impermissible material change to the petition. We therefore conclude that the Petitioner has not established that he has not satisfied the first prong.

III. CONCLUSION

The Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree, but he has not established the national importance of his proposed endeavor. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the second and third prongs of the *Dhanasar* analytical framework. *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).

ORDER: The appeal is dismissed.

points about the benefits of his work as a pilot and as a business consultant. As these points have no relation to either of his proposed endeavors, we consider these to be editing errors by the Petitioner's representative and will not consider them in our discussion.