U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29667365

Date: JAN. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil project manager, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 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. 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 petition 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the

proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Director observed that the Petitioner was eligible for EB-2 classification as an individual who is a member of the professions holding an advanced degree. But the Director ultimately concluded that the Petitioner's substantially meritorious[1] proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. The Director also determined that the Petitioner was not well positioned to advance their proposed endeavor. And the Director concluded that on balance of applicable factors, a waiver of the requirement of a job offer, and thus a labor certification, would not be beneficial to the national interest.

On appeal, the Petitioner contends the Director's decision was based on an erroneous conclusion of law and facts. Specifically, the Petitioner contends the Director applied a higher standard of proof than the preponderance of the evidence standard and asserts the Director did not consider the totality of the evidence the Petitioner submitted. They state on appeal that the evidence they submitted in the

[1] The Petitioner submitted numerous articles, web pages, and reports from non-profit research organizations and executive level agencies related to civil road and facility infrastructure in the United States. This evidence supported the overall merit of the Petitioner's proposed field of endeavor. So the Director correctly concluded the Petitioner's proposed endeavor had substantial merit. But, contrary to the Petitioner's assertions, the same evidence does not adequately describe how the Petitioner's specific proposed endeavor would broadly implicate matters rising to a level of national importance in construction, infrastructure, and civil engineering as we will discuss below.

record prior to and at appeal demonstrated that the Petitioner meets all three prongs under the *Dhanasar* framework and merits a discretionary waiver of the job offer, and thus the labor certification, in the national interest.

A. The Proposed Endeavor

In Part 6 of the initial petition, the Petitioner described their endeavor as a "civil project manager" who would "[d]irect engineering activities, ensuring compliance with environmental, safety, or other governmental regulations. Manage and direct the construction, operations, or maintenance activities at project site. Inspect project sites to monitor progress and ensure conformance to design specifications and safety or sanitation standards. Provide technical advice to industrial or managerial personnel regarding design, construction, program modifications, or structural repairs. Estimate quantities and cost of materials, equipment, or labor to determine project feasibility." Specifically the Petitioner's proposed endeavor, as described in their statements and their business plan, sought to benefit the overall U.S. economy through its participation in building construction project development, reducing the cost and usage of construction materials, and addressing demand for affordable housing. The Petitioner expected that their proposed endeavor would generate economic benefits such as direct and indirect job growth.

B. National Importance

The Director concluded that the Petitioner did not demonstrate their proposed endeavor was of national importance because the Petitioner did not demonstrate the broader implications of the proposed endeavor or its potential positive economic effects. For the below reasons, we agree.

In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have a national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id* at 890. What is critical in determining the national importance under *Dhanasar* is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. So it is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined.

As stated above, the Petitioner's proposed endeavor is to continue their career as a "civil project manager" at their wholly owned and operated entity [redacted] for the benefit of the "clients contracting" them for the "development, design, and construction of a project." The Petitioner rooted their eligibility under this first prong of the *Dhanasar* framework by touting the purported byproducts of their prosecution of their proposed endeavor as mentioned above, namely benefitting the overall U.S. economy through participation in building construction project development, reducing the cost and usage of construction materials, addressing demand for affordable housing, and job creation and growth. The Petitioner submitted two personal statements, two business plans, their

curriculum vitae, academic documents, evaluations, and certificates, several letters of recommendation, two expert opinion letters, and several articles and reports from private and public sector entities.[2] The Petitioner contends that national importance is broadly implicated by the potential value of their continued work in their construction project development field of endeavor on behalf of the clients who may engage their services.

Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The infirmity in the Petitioner's description of their endeavor is patent upon examination into the evidence and argument they introduced into the record. The Petitioner's evidence and argument do not help them carry their burden of production and persuasion because it does not relate to the proposed endeavor's national importance under the first prong of the *Dhanasar* framework.

The Petitioner's personal statement essentially stresses that it is their *execution* of the proposed endeavor is what will elevate it to a level of national importance due to their continuous work in the field over 20 years. The Petitioner described the undertakings and objectives of their proposed endeavor. The Petitioner stated that their past work experience and achievements render their work in their proposed endeavor likely to achieve results that will benefit the United States national interest. On appeal, the Petitioner essentially attempts to convince us that their many years of progressive experience executing construction projects elevates any endeavor they propose to undertake in the United States raised to the level of national importance. They also highlight their self-professed status as an "accomplished profession with extensive training and proven experience in the field of civil engineering and construction management" as evidence that their proposed endeavor is "improv[e]….the civil infrastructure and service works" of the United States. But the Petitioner's claims are not persuasive. The Petitioner's argument spotlights a fundamental misunderstanding of the *Dhanasar* framework's first prong. The first prong focuses on the proposed endeavor; not on the Petitioner's execution of that proposed endeavor. The *Dhanasar* framework is consequently unconcerned with the success of the proposed endeavor or the Petitioner's track record in their field of endeavor previously. The Petitioner's contentions about their successful past performance in the field of endeavor they propose, as well as evidence and information of their achievements and recognition, would better serve a demonstration of eligibility under the *Dhanasar* framework's second prong. So the Petitioner's contentions about their successful career-to-date, as well as evidence and information of their achievements and recognition such that they are, are irrelevant to an examination of their eligibility under the first prong of the *Dhanasar* analytical framework.

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner's employment verification letters, letters from employers, and letters of recommendation did not reflect how the proposed endeavor implicates national importance because the letters focused on the Petitioner's past work. When evaluating the national importance of a proposed endeavor under the first prong of *Dhanasar*, we are concerned with its potential prospective or future impact. The Petitioner's demonstration of prior similar work does not have an influence on the proposed endeavor's potential prospective impact based on its national importance.

From the outset, the Petitioner's business plan couches their endeavor in terms of targeting their services to "clients contracting" them for services, specifically in the State of Georgia. The Petitioner intends to target construction companies, individuals intending to build a house, and business and individuals intending to renovate their premises who may seek their services in construction industry consulting and construction project management. The Petitioner highlights productivity issues in construction, the "aging U.S. infrastructure," the importance of construction project management and civil engineering, U.S government initiatives for improvement of U.S. infrastructure, construction problems in Georgia, the job market gap, a rising residential market, the size and importance of the construction industry for the U.S. economy, and the need for affordable housing as issues that their proposed endeavor can address at a level broadly implicating matters of national importance.

The Petitioner in essence asserts that their construction industry consulting and construction project development and management activities in the State of Georgia will have broader implications rising to a level of national importance. However, the Petitioner does not connect their work to any broader implications to the field outside of the work they are specifically doing for their target market. The Petitioner expressed ambitious plans to expand their services beyond a locality in the State of Georgia, to the entire State of Georgia and to the United States at large thereafter. But as we said above, it is not required that the benefit of the Petitioner's proposed endeavor by and through its activities extend beyond the State of Georgia's geographical bounds. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry however is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. The Petitioner has not demonstrated how conferring the benefit to their clients grows beyond their clients alone.

The Petitioner asserts that the business plan contained research and data analysis demonstrating a clear understanding of the economic conditions of the target area of the proposed endeavor, the State of Georgia. Consequently, the Petitioner contends that they have demonstrated the positive economic benefits of their proposed endeavor. However, the evidence in the record does not reflect that the State of Georgia as a whole is an economically depressed area. Nor does the evidence in the record identify or support any specific economically depressed area in the State of Georgia of special interest to the Petitioner's proposed endeavor. And other than describing a potential to achieve the construction objectives of the individuals or businesses engaging the Petitioner for their construction consulting and construction project development and management services, the Petitioner's business plan does not sufficiently demonstrate the potential prospective economic impact of the Petitioner's proposed endeavor to their field at large. The evidence in the record does not sufficiently demonstrate how performing the proposed endeavor's services in the State of Georgia would broadly implicate matters rising to a level of national importance in the field of construction consulting or construction project development and management.

And the Petitioner anticipates a hiring spree to staff their proposed endeavor stemming from increasing gross and net income and resulting in increasing expenditures on salary. But we observe that the Petitioner submitted two business plans in the record with widely varying figures on job creation and financial data without explanation. So it is not clear from the record what the true magnitude of the Petitioner's anticipated job creation for the proposed endeavor is and where it would be located such that we can evaluate if it would have a substantial prospective positive economic effect commensurate with national importance.

The Petitioner offered sufficient evidence to support the substantial merit of their proposed endeavor and offered the same evidence to support the national importance of their proposed endeavor. But not every endeavor that purports to address productivity issues in construction and an "aging U.S. infrastructure" adjacent to U.S government initiatives in the construction and infrastructure arenas in the United States is nationally important. We said in *Dhanasar* that we focus on "the specific endeavor that the foreign national proposed to undertake" and "look for broader implications" to determine the proposed endeavor's national importance. *See Dhanasar*, 26 I&N Dec. at 889. The evidence in the record did not adequately demonstrate how the Petitioner's activities broadly implicated matters related to infrastructure. As stated before, the Petitioner's target market is composed of construction companies, individuals intending to build a house, and business and individuals intending to renovate their premises. It is unclear how the Petitioner's residential, commercial, and industrial building of what is described as mostly dwelling places or places of business improves matters of importance to U.S. infrastructure. The record does not convincingly demonstrate how residential, commercial, and industrial buildings constructed efficiently or affordably as the Petitioner intends to do would support U.S. infrastructure in a manner rising to a level of national importance. The record does not contain evidence which would sufficiently support extrapolating the Petitioner's construction consulting and construction project development activities to determine whether the potential prospective impact of the Petitioner's proposed endeavor has broader implications or positive economic impact rising to a level of national importance for U.S. infrastructure matters.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters or opinion statements from experts supporting the petition is not presumptive evidence of eligibility. *Id.* The Petitioner submitted two expert opinion statements. One was authored by [redacted], professor emeritus civil engineering at [redacted] The other was authored by [redacted] professor emeritus civil and environmental engineering at [redacted] Both opinion letters are dated December 22, 2022. [redacted] opinion focused on the Petitioner's "ability and achievements as an accomplished contributor in the field of Civil Engineering." [redacted] opinion focused on the Petitioner's "ability and achievement as an accomplished contributor in the field of the Construction industry." But these opinion statement do not illustrate how the Petitioner's proposed endeavor rises to a level impacting national importance either.

In the first instance, we note that both authors are focused on the Petitioner's "ability and achievement" in rendering their opinions. But as we stated previously the first prong focuses on the proposed endeavor. So, a petitioner's "ability and achievement" is not a relevant consideration to evaluate the national importance of the proposed endeavor.

Moreover, each both authors try root the national importance of the Petitioner's proposed endeavor in the importance of the construction or infrastructure or civil engineering fields. But in evaluating national importance we are not concerned with the importance of the field; we are evaluating the specific proposed endeavor. And as we stated earlier, simply proposing an endeavor adjacent to an area of substantial merit or special concern to the United States does not such an endeavor nationally important as a default. Neither author strays from their descriptions of the importance of the construction, infrastructure, and civil engineering fields to evaluate the Petitioner's specific endeavor and how it can have a prospective positive impact from the broader implications of its specific contributions to the construction, infrastructure, or civil engineering fields. Nor does either author sufficiently describe positive economic impacts aside from listing financial statistics related to the industries relevant to the Petitioner's proposed endeavor. Or in other words, neither author convincingly demonstrates the impact of the Petitioner's endeavor in the context of the financial statistics they list so that a meaningful evaluation of the proposed endeavor's potential prospective impact can be made to determine if it raises to a level of national importance. And both authors discuss the impact of the construction industry, infrastructure projects, and civil engineering initiatives on the environment to assert a broad individual and societal benefit stemming from the Petitioner's proposed endeavor. But neither author adequately describes how the Petitioner's commitment to efficient use of construction resources and reducing waste has broader implications to construction industry, infrastructure projects, and civil engineering initiatives beyond the entities engaging the Petitioner for their services which could be examined to determine if they rise to a level of national importance.

In sum, the record does not contain relevant, probative, or material evidence establishing the Petitioner's proposed endeavor has potential positive impact either through its broader implications to its field or its positive economic effects. So we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that they do not merit a favorable exercise of discretion to waive the requirement of a job offer, and therefore a labor certification. And we reserve the issue of whether the Petitioner demonstrated eligibility under the remaining prongs of the *Dhanasar* analytical framework. *See INS v Bagamasbad*, 429 U.S. at 25 and *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. So we dismiss the Petitioner's appeal.

ORDER: The appeal is dismissed.