U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28963107

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 engineer with a background in construction project management, seeks second preference 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 EB-2 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 a waiver of the classification's job offer requirement 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 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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, 888-891 (AAO 2016), provides the framework for adjudicating national

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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. EB-2 Classification

The Director did not determine if the Petitioner met the underlying EB-2 classification. However, the record demonstrates that the Petitioner's foreign degrees are equivalent to U.S. bachelor's degrees in agricultural engineering and civil engineering[2] and that he possesses more than five years of progressive experience in project management and civil engineering positions, which together establish he is a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

As such, the remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.[3]

B. Substantial Merit and National Importance

The Petitioner's proposed endeavor, as described in his "Definitive Statement," is to be an entrepreneur in the construction field and contribute to the U.S. economy, and its societal welfare, by developing and expanding his company. The company will engage in homebuilding and construction services and has the five-year goal of "provide[ing] low-income 1,000 Sqft Housing Construction Project and Low-Income 1,700 Sqft Housing Construction Project."

The Director issued a notice of intent to deny (NOID) requesting, in part, a more detailed description of the Petitioner's proposed endeavor as an entrepreneur in the construction industry and additional evidence explaining the national importance of the proposed endeavor. The Director's NOID noted that the Form I-140 stated that the Petitioner intended to "perform engineering duties in planning, designing, and overseeing construction and maintenance of building structures and facilities." The NOID took note of the evidence concerning the labor shortage in the Petitioner's field, and found it insufficient to establish the national importance of his endeavor. The Director also evaluated the Petitioner's business plan and found that it contained information that was not consistent with other evidence in the file, including the company's address and phone number, which are in Brazil. The Director noted that a lack of credible business plan made it insufficient to establish his endeavor had the potential to reach the level of "substantial positive economic effects," contemplated by *Dhanasar*.

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[2] The Petitioner has two undergraduate degrees in agricultural and civil engineering, as well as almost twenty years of experience working in these fields in Brazil. To document these credentials, the Petitioner has provided copies of his degrees, coursework transcripts, and sufficiently detailed work experience letters.

[3] Although not addressed on appeal, we note that the Director incorrectly referenced a different petitioner and occupation on page two of the decision. Upon review, similar to the Petitioner's appeal brief which also erroneously mentions a different field (aviation), it appears this was a typographical error.

In response, the Petitioner provided a copy of his previously submitted business plan and "Definitive Statement," as well as additional industry articles and reports, and his professional resume. After consideration of the Petitioner's NOID response, the Director denied the petition.

On appeal, the Petitioner asserts that in denying the petition, the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations," but does not point to any specific examples. The Petitioner further alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the appellant." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally 1 USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

Dhanasar's first prong focuses on the specific endeavor that the foreign national proposes to undertake and its "potential prospective impact." *Dhanasar*, 26 I&N Dec. at 889. In his "Definitive Statement," the Petitioner asserts that the company will be a strong contributor in addressing the "significant problem of the lack of affordable single-family houses in the U.S." The Petitioner submitted a letter of intent to invest in the company, explaining that the investor will give him $60,000 in exchange for a 5% ownership stake in the company. He also described having two other investors (for a total of four, including himself), for a total initial investment of $422,000 and a decision to reinvest for the first five years of operation, a total of $1,326,400. The company will provide the following products and services: brick exterior homes, wood exterior homes, stucco exterior homes, vinyl siding exterior homes, fiber cement exterior homes, and other exterior homes. His business plan explains these services in more detail. As the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education, we conclude that the endeavor has substantial merit. *Id.*

Here, much of the Petitioner's evidence relies on industry reports and articles concerning the infrastructure crisis, the shortage of civil engineers and construction manager professionals, and the Biden Administration's focus on improving infrastructure as an area of national importance. While these articles and industry reports explain the importance of his field, and the contributions made by immigrants to the U.S. economy, the information does not discuss the Petitioner's proposed endeavor or explain how it would be of national importance. Further, regarding his claims that "the impending shortage of Civil Engineers/Entrepreneurs in Home Building and Construction" makes his endeavor one of national importance, the U.S. Department of Labor directly addresses the shortage of workers through the labor certification process. We recognize the value of the housing construction industry and the importance of immigrant entrepreneurs in our economy, however merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor, as we explained in *Dhanasar*. *Id.*

The Petitioner also provided background information about the importance of attracting professionals in the sciences, technology, engineering, and mathematics (STEM fields). USCIS policy guidance sets forth "specific evidentiary considerations relating to STEM degrees and fields," but this guidance does not indicate that every proposed endeavor in a STEM field presumptively has national importance. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual. In determining whether the proposed endeavor has national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889.

We also noted in *Dhanasar* 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 . . . may well be understood to have national importance." *Id.* at 890. The Petitioner asserts that he "aims to contribute to the economy by providing low-income housing construction projects, thereby enhancing building and project management" expertise, which will ". . . extend beyond the confines of [his] specific endeavors." He further claims that his endeavor aligns with national initiatives to enhance economic activity, because he will "bring his globalized knowledge in significant financial and business topics to not only improve the American business platform, but also to create jobs within his own companies."

In the financial analysis portion of the Petitioner's business plan, it is projected that the company will create 16 direct jobs, and 27 indirect jobs with a total cumulative wage payment of $1,808,545 and an estimated $538,000 in federal tax payments on income by the fifth year. However, the business plan does not sufficiently detail the basis for its financial and staffing projections. Regardless, the Petitioner has not established that, even based on these unsupported projections, its activity stands to provide "substantial economic benefits" as contemplated in *Dhanasar*.

To bolster his assertion, the Petitioner claims that the company's three offices will be located within a Small Business Administration designated historically underutilized business zone (HUBZone).[4] However, the Petitioner has not demonstrated that his business meets the requirements for HUBZone certification. Further, to the extent that the Petitioner is trying to equate his business being in a HUBZone with *Dhanasar's* emphasis on job creation and economic effects in an "economically depressed area," the evidence does not establish the company's ability to qualify for HUBZone certification, nor does it sufficiently explain how merely locating his office in an HUBZone qualifies as "substantial positive economic effects, particularly in an economically depressed area."

The Petitioner also submitted a letter from a professor at [redacted] purporting to establish the national importance of his endeavor because it will create jobs and contribute to the

[4] The HUBZone program promotes business growth in underutilized business zones with the goal of awarding three percent of federal contract dollars to companies that are HUBZone certified. *See* https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program. Operating a business in an HUBZone offers several advantages including eligibility for federal contracting preferences, access to set-aside contracts, and potential tax incentives. *Id.* Businesses seeking HUBZone certification must ensure that their business is owned and controlled by U.S. citizens, a community development corporation, an agricultural cooperative, or an Indian tribe. *Id.* Further, the business's principal office must be located in the designated HUBZone, and it must be the location where the greatest number of employees perform their work. *Id.*

U.S. economy. The letter explains that construction is growing, and that construction managers, like the Petitioner, are expected to be needed as overall construction activity increases. The letter explains how construction of schools, residences, office buildings, retail outlets, hospitals, restaurants, and other structures, new roads, bridges, and sewer pipe systems are being upgraded or replaced. The letter also mentions that the United States is investing in infrastructure and construction spending is going up. The section of the letter dedicated to *Dhanasar's* first prong consists of general information about the importance of the construction industry and the role of construction managers within that industry. The professor emphasizes how the field and industry are growing (e.g., "[a]ltogether, real estate construction contributed $115 trillion to the nation's economic output."). He also adds that the COVID-19 pandemic created more at home workers who want bigger homes leading to more home construction. The professor did not elaborate on this point with specific regard to the Petitioner (or his proposed endeavor). Notably, the professor's emphasis on large single-family homes differs from the Petitioner's proposed endeavor of building affordable houses. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion 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 opinion. *Id.*

In addition, the Petitioner's resume and recommendation letters only address his past accomplishments as an agricultural and civil engineer and project manager on construction projects, but they do not demonstrate the national importance of his endeavor's "potential prospective impact." *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's recommendation letters discuss his successful handling of past projects, his expertise as an engineer and project manager, his success at reducing costs and completing projects ahead of schedule, and his professionalism and work ethic, as well as his student contribution to scholarly research. While we acknowledge that the Petitioner has made valuable contributions to his employers, his expertise pertains to *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id*. at 890. The issue here is whether the specific endeavor he proposes to undertake has national importance under *Dhanasar*'s first prong.

Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clients to impact the field of construction or project management more broadly at a level commensurate with national importance. Nor has he shown that the particular work he proposes to undertake offers original innovations that contribute to advancements or otherwise has broader implications for his field. Furthermore, the Petitioner has not demonstrated that his specific endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

As the Petitioner has not sufficiently established the national importance of his proposed endeavor and, thus, does not meet the first prong of the *Dhanasar* analysis, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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 first prong set forth in 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.

ORDER: The appeal is dismissed.