U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31283348

Date: JUL. 1, 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 focus on sustainable development, 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 eligibility for a national interest waiver. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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;

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

According to the Petitioner's statement provided with the initial filing, he intends to "establish and manage a construction management business" in Florida. The services provided by the company "will have sustainability at its core" and he will "help real estate developers of residential and commercial buildings and construction companies efficiently plan and develop high-profile projects and implement sustainable techniques." The Petitioner also submitted a business plan, copies of industry articles, and letters of recommendation in support of his eligibility.

The Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance and issued a request for evidence. In response, the Petitioner submitted additional documentation, to include an updated business plan for his proposed company, [redacted] letters from [redacted] indicating interest in working with the Petitioner's company; and a letter of intent from [redacted] indicating the company intends to invest $50,000 in [redacted] The Petitioner also provided financial and employment projections for his proposed company, additional recommendation letters, and an expert opinion letter. The Petitioner contended that his proposed endeavor of providing sustainable construction consulting services has national importance due to how his "solutions and unique approach" have a "wide application on multiple regions and providers", the "large amount of usability to [his] initiative nationwide", and the alignment of his endeavor with the U.S. government's objectives of improving infrastructure and growing the economy sustainably.

In denying the petition, the Director concluded that though the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate the Petitioner's work has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner did not show that benefits to the regional or national economy resulting from his proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The Director noted that while the submitted evidence emphasized the impact of civil engineers in the United States, the record demonstrated the potential prospective impact of the Petitioner's proposed endeavor is mainly his customers, and not beyond. Additionally, the industry

articles failed to demonstrate how the Petitioner's specific endeavor has national implications, significant potential to employ U.S. workers, or otherwise offers substantial positive economic effects for the United States.

On appeal, the Petitioner claims that the Director erred by incorrectly applying a preponderance of evidence standard that favored a "less likely" scenario rather than "more likely" when evaluating his eligibility. He asserts that the record demonstrates his proposed endeavor "to develop projects and consultancy in sustainable construction projects" and assist "entrepreneurs in contributing to the environment by constructing sustainable buildings and infrastructure, with a primary focus on reducing the urban heat island phenomenon" meets the national importance element of *Dhanasar*'s first prong. The Petitioner also argues that the Director did not consider the letters of interest from [redacted] and erred by finding that the proposed partnership with [redacted] would not have a substantial economic impact in the United States.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director thoroughly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework.

In determining 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." *See Dhanasar*, 26 I&N Dec. at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted articles addressing the importance of sustainable construction and its impact on the U.S. economy, public health, and environment, and provided recommendation letters from former colleagues, who attested to the quality of his work. However, the Petitioner's skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, 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.

We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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. Although the Petitioner discusses the value and importance of sustainable construction practices, to include the "large-scale production and installation of" permeable pavements and efforts to reduce the urban heat island phenomenon, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id.* at 889.

Further, the Petitioner did not demonstrate that his company's operations would provide substantial economic benefits to Florida or the region or the U.S. economy more broadly at a level commensurate

with national importance, nor did he demonstrate that his company's activities would substantially impact job creation and economic growth, either regionally or nationally. For example, the Petitioner's business plan projects that his company will have 17 full-time employees during the first five years. In addition, the letters of interest from [redacted] and a letter of intent for a proposed partnership with [redacted] with an initial investment of $50,000 are not sufficient to show significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. 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 an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.