U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31457706

Date: JUL. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 the Petitioner was eligible for the requested 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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,[3] 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.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualified as an individual of exceptional ability but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework and therefore must dismiss the appeal. Additionally, upon de novo review, we will withdraw the Director's determination that the Petitioner is eligible for the requested EB-2 immigrant classification.

A. National Interest Waiver

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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

In the initial filing, the Petitioner asserted his intention to work as a civil engineer in the construction industry, stating that his "primary goal here in the [United States] is not only to increase [his] abilities with new construction patterns but also to be an asset displaying good results and contributions to

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[3] *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).

American construction." Specifically, the Petitioner planned to operate a screen enclosure construction company based in [redacted] Florida. According to the Petitioner's initial business plan, the company would specialize in building screen enclosures, sunrooms, porch enclosures, and providing repair for these structures so that their customers could "enjoy their outside areas free from concerns and improve their life quality." In addition to his business plan, the Petitioner submitted a personal statement, letters of recommendation, and evidence of his educational and professional background.[4]

In response to the Director's RFE requesting additional information and evidence to establish the substantial merit and national importance of his endeavor, the Petitioner submitted a new business plan for a civil engineering consulting, advisory, management and training company. According to the Petitioner's new business plan, in addition to building screen enclosures, sunrooms, porch enclosures, and providing related repair services, he now intended to also provide consulting in civil construction and urban planning, high-end condominium advisory services, and training courses for professionals in the fields of civil engineering, architecture, and condominium administration. The Petitioner asserted that his company intended to "transform residential spaces into places of well-being and functionality through innovative engineering and design solutions." He also claimed that the impact of his company would extend beyond its direct customers because the company would raise industry standards, provide education and development, implement innovative solutions, promote a better quality of life for their customers' end-users, create jobs and stimulate the local economy, and promote environmental responsibility. In addition to his revised business plan, the Petitioner also supplemented the record with additional recommendation letters, and references to several industry articles and reports discussing various topics including the construction industry, civil engineering industry, the training and career counseling industry, and national initiatives surrounding the science, technology, engineering, and math (STEM) fields as well as critical emerging technologies (CETs), and the impact of immigrant entrepreneurs to the U.S. economy.

While acknowledging the evidence submitted, the Director concluded that, while the Petitioner had established the substantial merit of his endeavor, the record did not establish its national importance because the company did not have significant potential to employ U.S. workers or otherwise offer substantial economic effects, particularly in an economically depressed area.

On appeal, the Petitioner states that he is contesting the Director's assessment of his application but does not identify any specific erroneous conclusions of law or fact in the Director's decision. Instead, he generally reiterates the same arguments for the national importance of his endeavor previously made before the Director. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. See 8 C.F.R. § 103.3(a)(1)(v). By presenting only general disagreement with the Director's decision, without identifying the specific aspects of the denial he considers to be incorrect, the Petitioner has failed to sufficiently identify the basis for his appeal. *Matter of Valencia*, 19 I&N Dec. 354, 354–55 (BIA 1986). This alone is grounds for dismissal. 8 C.F.R. § 103.3(a)(1)(v). Nevertheless, for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his

[4] While we may not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

endeavor to establish his eligibility under the first prong of the *Dhanasar* analytical framework, and therefore must dismiss the appeal.

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have 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.

On appeal the Petitioner asserts that his company "arises in response to the growing needs of an expanding market in the [redacted] Florida region, where demand for innovative and sustainable housing is on the rise." According to the Petitioner, his company "is not just a service company; it is an entity that aims to revolutionize the residential civil engineering sector, promoting significant advances that have repercussions throughout the supply chain and society in general." However, the evidence does not support such assertions or otherwise establish that his endeavor will directly result in broader implications to the field, beyond the impact to his immediate customers. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's prospective customers, like the offerings outlined in the business plan, would not have broader implications in the field. *Dhanasar* at 893.

Similarly, the Petitioner's claims regarding the training and educational courses his company will offer do not establish the national importance of his endeavor. He contends that these courses will reach "720 individuals annually, culminating in 3,600 highly qualified professionals in the market in five years," which will "develop[] crucial skills in the construction sector," and "stimulate the development of infrastructure." Yet, the Petitioner has not explained the specific nature of these courses, nor has he shown that, even if his courses were to reach 3,600 professionals, they would result in broader implications to the field or the dissemination of knowledge at a level commiserate with national importance contemplated in *Dhanasar*. *Id.* at 889. Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).

Moreover, while the Petitioner also contends that his endeavor is nationally important because it is aligned with multiple federal government initiatives, including interest in CETs, STEM advancement, budgetary interest in creating affordable and sustainable housing, as well as the Department of Labor's interest in training professionals, these assertions are also unpersuasive. We recognize the evidence on record reflects the U.S. government's interest in technological advancements, and technological competitiveness, but the Petitioner did not sufficiently explain and support with evidence how his proposed endeavor would have a national impact on these broad government initiatives. For example, while the Petitioner asserts that his company is "strategically positioned to play a crucial role in Critical

and Emerging Technologies (CETs)," because his company may expand and train in areas of quantum information technologies, automated infrastructure, biobanking and connected transport, he does not explain how his company would expand in these areas, nor is it apparent from his business plan. And the industry articles and reports referenced in the Petitioner's appellate brief may establish the overall importance of STEM advancements and CETS, as well as the importance of the construction and civil engineering industries in general, the pertinent 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. Accordingly, the Petitioner's reliance on general background information and statistics concerning these industries is not persuasive.

Finally, we agree with the Director's conclusion that the Petitioner did not establish that his endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. On appeal, he claims that by its fifth year of operations, his company will directly employ "up to 18 permanent and commissioned employees," which would result in up to 96 indirect jobs, depending on various industry calculations. Additionally, the Petitioner indicated that by the fifth year of operations he anticipates his company will have an annual revenue of $4,612,483 and an annual federal tax payment of $592,869.28. Notably, the Petitioner provides no explanation for the basis of his employment and revenue projections. Yet, even if the endeavor's revenue and job creation projections were sufficiently corroborated, they do not establish that the endeavor would operate on a scale rising to the level of national importance, as the Petitioner has not explained how these proposed employment numbers and revenue will impact the area of intended operations. Moreover, in asserting the economic impact of his endeavor, the Petitioner relies on the general construction management, civil engineering services, and training fields to establish the economic impact of his endeavor; however, the Petitioner must show that any claimed economic benefits would result from his *specific* endeavor. *Id.* at 890.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

B. Eligibility for the Underlying Classification

While the appeal must be dismissed because the Petitioner has not satisfied prong one of the *Dhanasar* framework, upon de novo review of the record, we will also withdraw the Director's determination that the Petitioner qualifies for EB-2 immigrant classification.

The Director determined that the Petitioner qualified for the classification as an individual with exceptional ability by satisfying the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A),(C), and (F).[5] However,

[5] The Director's decision contained inconsistent language pertaining to their determination regarding the underlying EB-2 classification. Specifically, while the Director determined that the Petitioner had met three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), the Director stated that meeting those criteria qualified him for the EB-2 immigrant classification as "a member of the professions holding an advanced degree." This appears to be a harmless error, as the Director relied on the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) to establish the Petitioner's eligibility for EB-2 classification.

as previously discussed, meeting at least three criteria alone does not establish a Petitioner's eligibility for this classification. Here, the Director did not conduct a final merits determination to evaluate whether the evidence in its totality established the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *See generally* 6 *USCIS Policy Manual* F.5(B)(2). Moreover, we conclude that the record does not establish the Petitioner has met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) (recognition for achievements and significant contributions to the field) and will withdraw the Director's conclusion to the contrary.

The Director relied on the letters discussing the Petitioner's accomplishments during his employment with [redacted] to satisfy the criterion 8 C.F.R. § 204.5(k)(3)(ii)(F). However, while the letters commend the Petitioner's "analytical skills," "proactivity," and "excellence in his deliveries," as well as his contributions to his assigned projects, they do not establish achievements or significant contributions to his field. Instead, the letters only provide recognition of the Petitioner's general contributions to his employer and their customers, not to the industry in general. As such, the Petitioner has not met this criterion, and we withdraw the Director's conclusion to the contrary.

As the resolution of the issues pertaining to the Petitioner's eligibility for the requested national interest waiver under the first prong of the *Dhanasar* analytical framework is dispositive of this appeal, it would serve no legal purpose to issue a request for evidence for further investigation and analysis of the Petitioner's categorical eligibility for EB-2 classification. That said, the Petitioner should be prepared to address this issue in any future filings requesting EB-2 immigrant classification.

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, and the appeal will be dismissed. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve consideration of the Petitioner's eligibility under *Dhanasar*'s second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

ORDER: The appeal is dismissed.