U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31459391

Date: JUL. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial 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 the Petitioner had not established eligibility for 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 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. 8 C.F.R. § 204.5(k)(2).

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;
- 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] 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.

In a professional plan submitted with the petition, the Petitioner stated that he intended to continue working in their field for U.S. companies as an industrial engineer. He further stated that his "main objective is to seek more efficient, automated, economic and profitable means of production for the industry, but with a focus on clean technologies that are less aggressive to the environment, positively impacting the entire American society." The Petitioner also provided a list of specific duties he intended to perform in the United States as an industrial engineer. In addition to his professional plan and statement, the Petitioner submitted copies of his academic credentials, an expert opinion letter, letters of recommendation, and records of his achievements.

The Director determined that although the proposed endeavor had substantial merit, the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that his proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, would broadly enhance societal welfare or cultural enrichment, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework. On appeal, the Petitioner submits a brief which generally reiterates the benefits of his profession and his qualifications and contends that he has established the national importance of his proposed endeavor.

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. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and 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

[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).

[2] The record reflects that the Petitioner has earned a bachelor's degree in production engineering but does not contain evidence that the Petitioner has at least five years of progressive work experience in the specialty. The Petitioner should take note of this potential ineligibility and be prepared to address it in future immigration proceedings.

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.

We agree with the Director that the Petitioner has not provided sufficient documentation explaining how the proposed endeavor is of national importance. The Petitioner provided various tasks and services that he can provide as an industrial engineer to U.S. based companies, such as production planning and control, maintenance engineering, project management, and environmental impact management. Rather than establishing that the Petitioner's specific proposed endeavor has national importance, we note that most of these objectives simply describe the typical occupational duties of an industrial engineer. We recognize the importance of the industrial engineering and manufacturing industries; however, merely working in these fields is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. The record demonstrated that the Petitioner's proposed endeavor was essentially a job search. While we acknowledge the Petitioner's intent to provide engineering services to private companies and public institutions, the purpose of the national interest waiver is not to afford the Petitioner an opportunity to engage in a job search or further his own career while only adding ancillary benefits to the nation.

The Petitioner cites to articles and reports discussing a wide variety of topics including industry trends in the manufacturing industry.[3] On appeal, the Petitioner also cites to various national and government initiatives, such as "The American Jobs Plan," "Revitalizing American Manufacturing and Innovation (RAMI) Act," "Sustainable Manufacturing Initiative (SMI)," and "Manufacturing Extension Partnership (MEP)." The matter here is not whether these initiatives, as well as the topics of industrial engineering, manufacturing, or similarly related subjects, are nationally important. Rather, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his particular industrial engineering services to private and public entities. While we note that the findings in the publications support the Director's determination that the proposed endeavor has substantial merit, it does not establish that the endeavor has national importance. We recognize the value of industrial engineering services; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

The Petitioner also contends that his endeavor falls within a STEM (science, technology, engineering, or mathematics) profession. With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.[4] Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. Here, the Petitioner has not shown that his endeavor aims to advance STEM technologies and research or has broad implications rather than providing his limited professional services by working within a STEM profession.

[3] While the Petitioner and his counsel cite to numerous articles and reports throughout the record, the actual articles and reports were not submitted in support of the petition.

[4] *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual.

The evidence and argument the Petitioner introduced into the record does not help him carry his burdens of production and persuasion. In support of his claim that he can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner points to his background, education, and experience in his field. The Petitioner provided his professional plan, his academic credentials, letters of recommendation, and records of his achievements.[5] The letters of recommendation containing testimonials of the services the Petitioner performed do not describe how the benefits they have received connect to broader implications rising to national importance or any nationally important economic impact. The Petitioner also submitted an expert opinion letter from Dr. [redacted], a professor of manufacturing engineering at [redacted] 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, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor. In addressing the first prong of the *Dhanasar* framework, the author describes the U.S. manufacturing industry and its importance on the U.S. economy. It describes how the manufacturing industry supports national initiatives and that the Petitioner's experience makes him capable to provide industrial engineering services to the manufacturing industry. Instead of focusing on the Petitioner's specific proposed endeavor having a prospective impact in the field of industrial engineering, the opinion focuses on the importance of the manufacturing industry and how the Petitioner's experience as an industrial engineer would be beneficial to the United States. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work. The letter does not contain sufficient information and explanation of the Petitioner's proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work in industrial engineering offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

While the Petitioner's statements reflect his intention to provide valuable industrial engineering services for his clients or employers, he has not offered sufficient information and evidence to identify the proposed endeavor with specificity or otherwise demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *See Dhanasar*, 26 I&N Dec. at 893. The record does not show through supporting documentation how his endeavor sufficiently extends beyond his employers or clientele to impact the industrial engineering field or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner tries to highlight the broader implications of his endeavor to enhance societal welfare or cultural enrichment through the reduction of environmental impact of manufacturing operations. Whilst the implementation of sustainable manufacturing practices holds merit, the record does not sufficiently describe how the work of a single industrial engineer could implicate the greater national

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

interest. The provision of industrial engineering services could directly benefit companies the Petitioner works with; however, it is unclear this extends beyond the Petitioner's employer. This is akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and not the wider population. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner rising to national importance. *Dhanasar* at 893. By extension activities which only benefit a specific employer, like the Petitioner's proposed endeavor, would not rise to a level of national importance.

The Petitioner did not show how his industrial engineering services have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. The Petitioner continues to make general claims that his contributions as an industrial engineer will result in companies "increas[ing] their competitive advantage, strengthen[ing] their market position, and creat[ing] new opportunities for growth." While the Petitioner asserts that his services will lead to "a national and even global ripple effect that impacts the nation at large," the Petitioner did not sufficiently explain or demonstrate how his specific endeavor would have any projected U.S. economic impact or job creation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's industrial engineering services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments concerning eligibility under the remaining *Dhanasar* 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 alternate issues on appeal where an applicant is otherwise ineligible).

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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.