U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31650834

Date: JUL. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a mining technician planning to work in the field of consulting, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts, or business, 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 met the criteria for an EB-2 immigrant classification as an individual holding an advanced degree, but had not shown it would be in the national interest to waive the classification's requirement of a job offer, and thus of a labor certification. Notably, the Director declined to make a finding on whether the Petitioner met the EB-2 immigrant classification as an individual of exceptional ability in the sciences, arts, or business because it was not needed, the Petitioner had already met this classification as an individual holding an advanced degree. 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.

Once a petitioner demonstrates eligibility for the underlying EB-2 classification, 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, 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 determined that the Petitioner qualified as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework.

A. Underlying EB-2 Immigrant Classification

On appeal, the Petitioner claims the Director made a classification error in assessing his case under the advanced degree category, overlooking the "essential requirement," of exceptional ability. He states further that he never claimed he possessed an advanced degree and finding he did possess one was not necessary for approval of his petition. He asserts that analyzing whether he was an individual of exceptional ability was fundamental to the petition.

We believe the Petitioner may be misunderstanding the role the EB-2 immigrant classification plays in determining whether a petitioner qualifies for a national interest waiver. As stated above, 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. It is inconsequential which one of these qualifications the petitioner has, as long as they establish one of them. Here, the Director found the Petitioner has an advanced degree in that he has at least a bachelor's degree and five years of experience. In support of this decision, the record indicates that the Petitioner has the equivalent of a bachelor's degree in business and over five years of experience. Thus, we affirm the Director's conclusion that the Petitioner meets the EB-2 immigrant classification as an individual holding an advanced degree and, as such, no purpose is served in analyzing whether he meets the qualifications as an individual of exceptional ability.

B. National Interest Waiver

For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework, and we will dismiss the appeal.

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

[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 to be discretionary in nature).

education. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner's proposed endeavor is to provide a direct line of improvement to U.S. mining companies, enhancing their operation in mineral extraction to benefit the environment and any client company's finances. The Director's decision was silent as to whether the Petitioner's proposed endeavor was of substantial merit,[2] but found it did not rise to the level of national importance as contemplated in *Dhanasar*.

Specifically, the Director concluded that the Petitioner did not demonstrate that his proposed endeavor would extend beyond his company and customers to impact his field more broadly. The Director asserted further that the record did not show the proposed endeavor offers original innovations that contribute to the advancement of his field nor did his professional plan outline in sufficient detail the substantial positive economic impacts of his endeavor. Finally, the Director acknowledged the Petitioner's claims that his endeavor will further national initiatives in science, technology, engineering, and math, but indicated that the record did not detail how his endeavor, mining technician consulting, would specifically play a part in furthering a national initiative.

Upon de novo review, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor would have national importance. 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 does not submit additional documentation. He asserts that the Director incorrectly referred to his "professional plan," as a "business plan," which led to the likelihood of the business succeeding being assessed, a factor that he states is not permissible under *Dhanasar*. Furthermore, the Petitioner states that when analyzing the third prong of *Dhanasar* the Director acknowledged the Petitioner's endeavor would be of national importance and substantial merit, while finding in the first prong that this endeavor did not meet this standard.

We adopt and affirm the Director's decision as it relates to national importance. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). We agree with the Director that the Petitioner has not shown that his proposed endeavor will broadly advance his field, further innovations in the field, and/or have substantial economic benefits in the United States. For example, his professional plan indicates that the mining industry in the United States produces

[2] As the issue of national importance is dispositive, we will not decide the issue of whether the proposed endeavor is of substantial merit.

approximately $82.3 billion in raw materials and provides 370,000 direct jobs. However, his professional plan does not detail specifically what his proposed endeavor's impact would be on this industry. There are no projections indicating how much of this billion-dollar industry the Petitioner will impact or how many employees, if any, he will employ.

In addition, to address the Petitioner's concerns on appeal, the Director's conclusion that the Petitioner's endeavor would not affect the mining industry more broadly was not an assessment on the likelihood of the success of the business, but a statement made based on the evidence provided at the time. The professional plan does not establish that the proposed endeavor will have an impact on the mining industry beyond the direct contact the Petitioner would have on his clients and the Petitioner does not include the detail necessary to show that this contact with clients would be so substantial as to affect the industry in a broad way.

Finally, we do acknowledge that the Director's opening statements in discussing Dhanasar's third prong- stating that the Petitioner's work will be "an immense advantage to the U.S. economy," has "urgency," and "will absolutely enhance the economic landscape and societal welfare of the U.S.," seem out of place given the first prong of Dhanasar finding. Overall, these are not contradictory of the first prong finding because here, in the third prong analysis, the Director is beginning a balancing test and outlining the potential positives of the Petitioner's endeavor to weigh against whether it would be beneficial to waive the requirement of a labor certification. The Director finds on balance, it would not be beneficial to waive the labor certification. Moreover, as we discussed above, we find the Director's statements in this regard to not be reflected by the evidence presented. For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.