U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31478989

Date: JUL. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an urban development planner, 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established that 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. 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

According to the Petitioner's statement of intent, he intends to continue his work in the field of regeneration, also known as urban renewal. He refers to his experience in the United Kingdom where his work with regeneration projects have included analyzing and researching real estate trends; identifying real estate opportunities and challenges for areas that have potential for regeneration, such as sites that have been neglected or have difficulty attracting investors; obtaining the necessary licenses and permits; and assembling a team of consultants, architects, and lawyers to initiate and advance the regeneration projects. The Petitioner indicates that he is "now intent on taking on a different role in these regeneration projects" and instead of carrying out the projects himself, he hopes to "work as a consultant and provide support to real estate owners and other developers." His goal is to "provide consulting services to the real estate market and become actively involved with regenerating American sites." He sees "in the United States many opportunities for bringing forward regeneration" due to the

acute housing crisis and availability of mill and factory sites that have been abandoned, resulting in a loss of employment opportunities. He notes that the "situation in many ways resembles the situation in the United Kingdom" and there are many sites in the United States "that could be regenerated in order to create economic and cultural opportunities for residents." The Petitioner also submitted letters of recommendation and industry articles and reports 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 or that the Petitioner is well positioned to advance the proposed endeavor and issued a request for evidence. In response, the Petitioner submitted additional documentation, to include his statement of intent, a consulting firm's report and articles discussing his projects in the United Kingdom, letters from a potential client in the United States and three individuals familiar with the Petitioner's work, and articles and reports about the U.S. housing crisis and urban revitalization efforts. The Petitioner indicated that the record demonstrates he is well positioned to advance the proposed endeavor and referred to his lengthy experience in the development industry. He noted that he has several urban renewal projects underway in the United Kingdom, he has led urban renewal projects which cumulatively provide a "$1.702 billion impact on the national economy of the United Kingdom", and his experience and practical knowledge in the real estate acquisition and development industry "cannot be replicated by those with less real-world experience."

In denying the petition, the Director concluded that though the proposed endeavor had substantial merit and national importance, the record contained insufficient evidence to demonstrate the Petitioner is well positioned to advance the proposed endeavor under *Dhanasar*'s second prong. The Director noted that though the Petitioner provided a letter of interest from a prospective employer, the letter lacked details that demonstrated a definitive impact on the Petitioner's ability to advance his proposed endeavor. On appeal, the Petitioner states that he is providing new facts to be considered as part of his eligibility determination and submits additional letters from U.S.-based companies "seeking to engage him as an urban renewal expert." He asserts that the new letters, in conjunction with the previously submitted evidence, demonstrate he is well positioned to advance the proposed endeavor.

Upon review, the record supports the Director's determination that the Petitioner did not demonstrate, by a preponderance of the evidence, that he meets the second prong of the *Dhanasar* framework. We note the letters submitted on appeal indicate three U.S.-based companies have expressed interest in engaging with the Petitioner as an urban renewal consultant. However, the letters are dated in October and November 2023, subsequent to the filing date of the instant petition in July 2022. A petitioner must establish eligibility for the benefit he is seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, the submitted letters generally describe interest in working with the Petitioner in the United States on urban renewal projects without providing sufficient details, such as information about proposed projects, responsibilities, dates, or potential wages.

The Petitioner further argues that the record as a whole demonstrates his education, skills, knowledge, and record of success with urban renewal efforts. He refers to the letters from five industry experts who indicate the Petitioner is "widely regarded as a skilled expert in development planning" and urban renewal/regeneration. While the submitted recommendation letters refer to the Petitioner's work on multiple projects in the United Kingdom, the record does not contain sufficient evidence to show the

overall impact of the Petitioner's role. For example, the Petitioner indicated in the initial filing that he has "spearheaded six major projects across England" which are "estimated to create 426 permanent construction jobs" and "1,400 retail and commercial jobs" and "inject the value of $98,038,027 United States dollars annually into the U.K. economy." As evidence of these estimates, the Petitioner provided a report from a consulting firm. However, the report indicates that the majority of the projects are still in the development stages; the job creation and financial value estimates are based on projections over 25 years; and the basis of the estimates are not fully explained or supported in the record. We also noted in *Dhanasar* that one of the factors considered to determine whether a Petitioner is well positioned to advance the proposed endeavor is evidence of a model or plan for future activities. Though the Petitioner indicated in his initial filing that once his petition is approved he "will continue to utilize the business model that has provided him with such success internationally", the record lacks details demonstrating a specific business model utilized by the Petitioner for past projects or an intended model for his proposed endeavor in the United States.

In its totality, the record does not reflect a specific model or plan for the Petitioner's future activities or sufficient interest from potential customers, investors, or other relevant entities or individuals to demonstrate that he is well positioned to advance his proposed endeavor as an urban renewal consultant. Because the Petitioner has not established that he is well positioned to advance his endeavor as required by the second prong of the Dhanasar framework, he is not eligible for a national interest waiver. Accordingly, discussion of the balancing factors under the third prong would serve no meaningful purpose. We decline to reach and hereby reserve remaining arguments concerning his eligibility under the third prong of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

ORDER: The appeal is dismissed.