U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32748885

Date: JUL. 25, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an electrical engineer, 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, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. 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). 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. Next, a petitioner 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;

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner emphasized throughout this proceeding that he has over 11 years of experience in the electrical engineering and information technology (IT) fields, as well as relating college degrees. He initially submitted statements explaining his proposed endeavor, indicating that he will:

> [P]rovide his specialized services in telecommunications, electrical engineering, software engineering, and market analysis to impact the energy industry in the United States. [He] emphasizes the importance of product design and innovation. He will conduct thorough market research, identify emerging trends, and address customer needs through the development of innovative product concepts. . .
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> . . . .
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> My proposed venture seeks to [address cybersecurity threats] through the implementation of wireless communication systems, IoT solutions, sustainable energy technologies, and community development initiatives, promoting digital inclusion, job creation, technological advancements, enhanced cybersecurity, and a holistic approach to social and economic progress in less favored areas.

The Petitioner submitted a variety of documentation, including evidence of his education and experience, statements describing certain aspects of his proposed endeavor and the industries he will work in, as well as recommendation and support letters. He referenced industry reports and articles, discussing, among other things, recent technological advances in mobile telecommunications systems and their global significance, the impacts of cybersecurity threats on our nation's infrastructure, and the important role of startup investors on the U.S. economy.

He contends that through his endeavor he will contribute "to a culture of continuous learning and growth," with a focus on cybersecurity which "is pivotal in safeguarding critical infrastructure and data, instilling technological trust and resilience against the ever-evolving landscape of cyber threats." He also asserts that he will "focus on environmentally friendly solutions [which] signifies a conscientious approach to sustainable technology development, aligning science and technology with the imperative goals of minimizing environmental impact, reducing carbon emissions, and fostering the adoption of renewable energies.

Notably, the Director issued a request for evidence (RFE) asking for a detailed description of the Petitioner's proposed endeavor, supported with documentary evidence. However, the Petitioner did not sufficiently address this aspect. In the RFE response, he reiterated various IT-related tasks he would perform during his employment as an electrical engineer, under headings such as product design and

development, R&D and team management, project management and execution, IoT architecture and connectivity solutions, global market expansion and product localization, and cybersecurity. He explained that he will "work for American companies or work as a consultant focusing on the energy, telecommunications, and railway sectors. Specifically, my consultancy approach allows for flexible and impactful contributions in these sectors, without having to establish a new business entity."

The Petitioner also provided a job offer letter from [redacted] (Mr. K-), a manager with W-E- as evidence of his prospective work plans. Mr. K- indicated that he wishes to hire the petitioner as a systems specialist without further explanation of what the duties of that position will entail. While Mr. K- stated that he is "convinced that [the Petitioner's] qualifications and capabilities are particularly relevant to our company's direction and will uniquely serve to better the products, solutions, and services we provide," he did not explain how the Petitioner's employment as a systems specialist with W-E- will produce benefits to our nation at a level commensurate with national importance. Though this letter indicates that a U.S. employer is willing to hire him, neither the Petitioner nor Mr. K- offered a detailed description explaining the means through which he will prospectively deliver electrical engineering and IT-related consultancy services, supported by documentary evidence.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, they also concluded in part, that the Petitioner had not demonstrated that his proposed endeavor had national importance. On appeal, the Petitioner submits a brief and relies on evidence submitted to the Director which they reviewed and considered in denying the petition. Based on our de novo review, we agree with the Director that the record does not offer evidence sufficient to translate *how* the Petitioner's specific work in the field stands to sufficiently impact U.S. interests or the energy, telecommunications, and railway industries more broadly at a level commensurate with national importance. While we may not discuss every document submitted, we have reviewed and considered each one.

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 *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 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.

The Petitioner alleges on appeal that the Director "did not fully grasp the systemic influence [his] endeavor would exert on various industries and the transformative role it could play in fostering growth and bolstering competitiveness on a national scale." He contests the Director's determination that the record lacks sufficient evidence "linking his proposed endeavor to substantial economic benefits commensurate with national importance." He points to the evidence in the record about U.S. government initiatives, and the importance of the industries in which the Petitioner will seek employment and STEM employment in the United States, asserting that he "possesses the expertise to

address critical challenges and opportunities in these sectors, [w]hether it is optimizing energy systems, enhancing telecommunications networks, or improving railway infrastructure. . ."

When determining national importance, the relevant question is not the importance of the 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 id.* at 889. Much of the Petitioner's evidence focuses on the importance of industries in which he will work and the benefits of STEM employment generally, rather than the benefits of his specific proposed endeavor to our nation. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 369. Collectively considering the referenced articles, reports, and statistics, we conclude that they do not sufficiently support a finding that his specific proposed endeavor has national importance.

The Petitioner also provides an expert opinion letter prepared by [redacted] (Mr. F-), who is the president of his own electrical engineering consulting firm. Mr. F- praises the Petitioner's education, experience, past success, personal qualities, and the results he achieved. However, these qualities relate to the second prong of the *Dhanasar* framework, that the individual is well-positioned to advance their proposed endeavor, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar's* first prong.

Importantly, Mr. F- does not specifically explain how the Petitioner, through his proposed endeavor will have a significant prospective impact on the United States, including the national or global implications of his work products on the U.S. energy, telecommunications, and railway systems, its potential to employ U.S. workers, or through other positive economic effects. The information offered in his letter is largely limited to general observations about the Petitioner's qualifications and the occupation and industries in which he will work. He does not offer any analytical roadmap that lays out the basis for his opinion that the Petitioner meets *Dhanasar's* first prong. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). We conclude Mr. F-'s opinion letter provided lends little probative value to the matter here.

Similarly, the Petitioner provided reference letters from former employers and colleagues who outline his work accomplishments and put forth general statements that assert his services would be beneficial to our country should he immigrate to the United States. Clearly, the letter writers hold the Petitioner in high regard. However, the authors do not provide sufficient clarity regarding the specific endeavor that the Petitioner will focus on should this petition be approved. For example, the letter from [redacted] discusses the work the Petitioner performed when they were colleagues at the same firm, and he is complimentary of his accomplishments there. While he indicates "I have no doubt that [the Petitioner] will continue to achieve remarkable feats in his future career," he does not specifically discuss the nature of the Petitioner's proposed endeavor and explain how the products and services provided therein will significantly impact our nation. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Chawathe, supra.* Here, the record does not establish that his proposed endeavor stands to substantially impact the field at a level commensurate with national importance. *Dhanasar* at 890.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver. Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.