U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31979342

Date: JUL. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and civil engineer, 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 the record did not establish that the proposed endeavor would have the economic or social impact that would rise to the level of national importance. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner argues that the Director did not apply the correct standard of proof to the evidence provided in support of the petition.

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:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- 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 Petitioner, a citizen and national of Brazil currently residing in the United States, seeks to establish an engineering consulting and project management company in the United States. In support of his proposed endeavor, the Petitioner provided a personal statement, business plan, industry reports, reference letters, and academic credentials.

The Director issued a request for evidence seeking additional information related to the national importance of the Petitioner's proposed endeavor. In response, the Petitioner provided a new brief and additional industry reports regarding the construction and engineering services industry in the United States. The Director determined that the Petitioner had established substantial merit but not met his burden of proof to establish that his proposed endeavor would have the potential prospective economic impacts that would rise to the level of national importance or that a waiver of the job offer and labor certification requirements for EB-2 classification would be in the best interest of the United States.

The Petitioner contends on appeal that the Director "did not apply the proper standard of proof ..., instead imposing a stricter standard, and erroneously applied the law ...." (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's resume outlining his experience; the business plan describing his credentials and the projected benefits he offers the United States; letters of recommendation attesting to his work in the field; and industry reports and articles showing the national importance of the proposed endeavor.

Upon de novo review, we find the record does not demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below. The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

A. The Proposed Endeavor

in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

The Petitioner described his proposed endeavor in his definitive statement provided to the Director as follows:

> I intend to continue using my expertise and knowledge, gained through my over 16 years of professional experience, to work as a Civil Engineer/ Entrepreneur and contribute to the U.S. economy and its societal welfare, through the development of project management in the construction sector. I will do this by developing and expanding my company... a consulting firm focused on providing civil engineering and project management services to U.S. companies.

The Petitioner also provides revenue and staffing forecasts for his proposed endeavor in the business plan submitted in support of his petition:

> A financial forecast indicates (the company) is set to impact the Construction Project Management Services industry with a total payment of wages of 4.68 million dollars in a total of 5 years of operation, in the States of New Jersey, Pennsylvania and Florida, generating 35 direct jobs for U.S. workers, helping the U.S. citizen improve their daily quality of life and safety. The company projects 8.94 million dollars in revenue for the first (5) five years.

The business plan goes on to provide details regarding the location of three offices in qualified "Hub Zones" and additional information on the scope and importance of the construction industry in the United States with information from industry reports and articles.

B. Substantial Merit and National Importance

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. *Id.* at 889.

The Director determined that although the Petitioner's proposed endeavor has substantial merit, the evidence did not establish that it is of national importance as required under the first prong of the *Dhanasar* framework. As stated above, the Petitioner argues that the Director did not evaluate the evidence provided in support of his petition with the appropriate standard of proof. However, the Director's decision clearly articulates that while the petitioner demonstrated his business may succeed in its goals and supported its financial projections with relevant industry data, he did not show that the economic impact of his endeavor would rise to the level of national importance. We agree with the determination of the Director that the Petitioner's projected revenue of $8.94 million and creation of 35 direct jobs over five years does not demonstrate a national economic impact in light of the IBIS world data indicating that the construction management industry generates $236.2 billion annually in the United States.

The Petitioner further claims on appeal that the national importance of his proposed endeavor is evidenced in the industry reports and articles provided. He argues that the reports demonstrate the

national importance of qualified construction project managers to more efficiently complete crucial infrastructure projects identified by the current presidential administration as having national importance. The record includes industry reports relating to the importance of the construction and engineering industries to the growth of the U.S. economy; expected growth of the construction and engineering industries; shortage of qualified engineers; entrepreneurial opportunities in underserved communities; economic benefits of immigrants; benefits of immigrants on small businesses; and the economic benefits of immigrants and entrepreneurship. We recognize the importance of the construction and engineering industries and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the engineering and construction fields or starting a civil engineering consulting business for the construction industry is insufficient to establish the national importance of the proposed endeavor.

The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor. Instead of focusing on the importance of an industry or the need for workers in a specific industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar,* we 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 argues that by creating jobs and generating tax revenue his business would have a profound economic impact on the community in which he operates by generating additional rental and commercial income. The Petitioner states on appeal that by participating in the HUBZone program designed to stimulate economic activities in local areas with a history of economic challenges, that his business would help increase economic diversity and reduce dependence on a few dominant industries. This determination hinges on an assessment of the broader societal or economic implications of the Petitioner's contributions, requiring he demonstrate broader benefits that extend beyond the confines of a local industry. *See id.*at 893. Therefore, while ripple effects may signify positive developments within a narrow area, they alone may not suffice to establish the requisite level of national importance. *Id.* at 890, 892. Thus, it remains incumbent upon petitioners to present compelling evidence of their capacity to significantly benefit the industry or field as a whole, in accordance with the prevailing legal standards.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the owner and CEO of his proposed civil engineering consulting business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed civil engineering consulting work and the claimed economic results.

Because the Petitioner has not established his proposed endeavor has national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. We reserve our opinion regarding whether the evidence of record satisfies the third *Dhanasar* prong. *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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.