U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31090557

Date: JUNE 4, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who describes himself as a process engineering project manager, 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 the record did not establish that the Petitioner is eligible for, and merits as a matter of discretion, a national interest waiver. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If 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,[3] 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.

II. ANALYSIS

A. Advanced Degree Professional

The Director found the Petitioner qualifies as a member of the professions holding an advanced degree. While we agree that the evidence establishes the Petitioner holds the foreign equivalent of a U.S. bachelor's degree in production engineering, after reviewing the record, we question whether it, in fact, contains evidence that the Petitioner actually possesses an advanced degree or five years of progressive post-baccalaureate experience in the specialty.

However, as the resolution of the issues pertaining to the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework is dispositive of this appeal, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category.[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, 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,

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[3] *See also 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).
[4] That said, the Petitioner should be prepared to address the issue in any future NIW filings.

health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner proposes to work as a project manager in the process engineering field.[5] In his personal statement, he claims he will help companies optimize financial processes to support efficient resource allocation and cost reduction strategies, enhance operational efficiency, and drive sustainable practices in organizations.

The Director determined that the Petitioner's proposed endeavor has substantial merit but not national importance. On appeal, the Petitioner states the Director applied a stricter standard of proof and did not analyze the totality of the evidence. Specifically, he asserts the Director "focuse[d] solely on information related to the [Petitioner's] contributions and expertise in the STEM field while neglecting the broader context provided in the Personal Statement, the Expert Opinion Letter, and the Probative Research." Upon de novo review, we agree with the Director's conclusion that the record does not sufficiently show the national importance of the Petitioner's proposed endeavor such that it satisfies *Dhanasar's* first prong.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his 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*. at 376.

Here, the Director's decision reflects consideration of the evidence the Petitioner claims was disregarded and includes a discussion of why the record did not establish the proposed endeavor's national importance. While the Petitioner generally asserts that the totality of the evidence is sufficient to satisfy *Dhanasar's* first prong, he has not meaningfully addressed the Director's concerns regarding deficiencies in the evidence or articulated how the evidence as a whole overcomes the Director's analysis and findings. *Id*. (providing that "the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true). Additionally, although the Petitioner expresses disagreement with the Director's analysis of the evidence in the record, he does not adequately explain how the Director's specific findings and conclusions applied a stricter standard of proof. Simply disagreeing with the Director's determinations, including the weight given to different pieces of evidence, is insufficient to support the Petitioner's allegation that the Director erroneously applied the law and regulations to the facts of his case.

Contrary to his arguments on appeal, the Petitioner's personal statement also does not support the claim that his proposed endeavor meets the national importance requirement of *Dhanasar*'s first prong. While the Petitioner quotes numerous passages from his personal statement in his appellate brief, he does not offer any meaningful argument as to what "broader context" was neglected by the Director in her determination.

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[5] In the Executive Summary section of his personal statement, the Petitioner also states he plans to work in the United States as a "Process Engineer in Financial Management."

The Petitioner's personal statement generally emphasizes the value of business process management and process engineering, rather than focusing on the prospective impact of his specific endeavor. For example, the Petitioner discusses the importance of process improvement in business to ensure efficiency, reduce operational costs, increase productivity, mitigate risk, and optimize resource utilization, as well as the role that process engineers play to achieve these results. However, the Petitioner does not explain how the project management services his endeavor would provide are distinguishable from those of other project managers, or how providing services for an individual company would have broader implications and extend beyond his immediate employer and its clients to have regional or national economic impacts. For instance, the Petitioner hopes to provide his services to [redacted], where he will, among other duties: develop and implement efficient processes and workflows in alignment with management's goals and objectives; analyze estimate data, identify areas for improvement, and recommend process enhancements to optimize performance of product production; collaborate with cross-functional teams to design and implement process improvements; and monitor and evaluate process efficiency and effectiveness. However, these objectives simply describe the typical duties of a project manager and do not show that the Petitioner's specific proposed endeavor rises to the level of national importance.

The Petitioner also contends that his endeavor will have national implications because it will provide "significant economic progress and contribute to the economic vitality of the United States." Again, the record does not provide sufficient detail on how the Petitioner plans to accomplish these goals. His general references to his work "contributing to the overall economic growth and well-being of the nation" and "contribut[ing] exponentially to the U.S. economy," are too attenuated and rely more on generalizations regarding the results of typical business activity, rather than probative information about what the Petitioner plans to accomplish through his endeavor, how he will do it, and how it may have national importance. The Petitioner does not point to any corroborating evidence that would directly link his specific endeavor to the overall economy's growth or other substantial positive economic effects.

The Petitioner also asserts on appeal that the Director "arbitrarily and capriciously" ignored the expert opinion, which affirmed that the Petitioner's proposed endeavor has national importance. He contends that, because the Director did not raise grounds to contest the authority of the expert's opinion, we should defer to the opinion.

As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*

Here, the expert opinion is of little probative value because it does not meaningfully address the details of the Petitioner's proposed endeavor and why it, as opposed to the work of project managers in general, would have national importance. The opinion focuses on the Petitioner's field and neglects to concentrate on the specific proposed endeavor to explain its national importance. For example, the opinion claims that the Petitioner's endeavor has a "significant potential to employ U.S. workers" and

that the Petitioner's knowledge and skills will allow him to "generate great impact to U.S. companies," which will translate to "benefits for the industry and the U.S. economy." It also claims that the nation will benefit in terms of economic growth, job creation, and increased tax revenue. However, the opinion does not offer specific details on how the Petitioner's endeavor would accomplish these goals or explain how any impact would extend beyond the Petitioner's employer and its direct clients. Instead, the opinion primarily focuses on how project managers as a whole can make a significant impact on businesses and other sectors of the economy, which is insufficient to show the national importance of the specific proposed endeavor itself. *See Matter of Dhanasar*, 26 I&N Dec. at 889 (noting that the focus of prong one is on the specific endeavor the noncitizen proposes to undertake).

While the opinion also claims the Petitioner's expertise and experience in process engineering and financial management will contribute to the overall economic growth and well-being of the nation, the Petitioner's knowledge, skills, and experience are considerations under *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of his proposed work's prospective impact, which he has not done. Consequently, the opinion letter is not persuasive to show the endeavor meets the requirements of *Dhanasar's* first prong.

In support of his claim, the Petitioner also submitted various articles and reports, including documents addressing manufacturing and process engineering, business management, mail center efficiencies, direct mail marketing, and the STEM field. The Petitioner reiterates that his proposed endeavor has national importance because these industries are matters of national priority.[6] However, the relevant question under *Dhanasar's* first prong is not the importance of the field, industry, or profession in which the individual will work; instead, the focus is on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The articles and reports provide only general background information on these industries and fields and do not specifically relate to or discuss the Petitioner's proposed endeavor, including how it might impact these fields more broadly, such that it rises to the level of national importance. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

We also are unpersuaded by the Petitioner's claim that his proposed endeavor has national importance due to the "urgent shortage of STEM professionals in the United States." The record contains insufficient evidence that the proposed endeavor stands to impact or significantly reduce the claimed

[6] The record does not adequately support the Petitioner's claim that he works in a STEM related position or that his proposed endeavor is in the STEM field. In his personal statement, the Petitioner proposes to work as a "Project Manager in the Process Engineering field." In the cover letter submitted with his petition, he describes the work of a process engineer as "designing and managing the manufacturing systems for a product" and "creat[ing] the stages of a manufacturing system that turn raw materials such as metal, plastic, or wood into an updated or new product." Despite making repeated references to "process engineering" and activities involving "manufacturing processes" in his personal statement, the Petitioner's description of his proposed duties appear to primarily encompass managing business and financially related processes. Likewise, his job offer with [redacted] appears to consist of performing business and financial management activities involving mail and digital printing services, as opposed to project management in an engineering field. Consistent with this, his personal statement also reflects that he is petitioning to work in the United States as a "Process Engineer in *Financial Management*" (emphasis added). The Petitioner has not persuasively shown that his proposed endeavor is, in fact, in the STEM field. However, even if he had, the evidence would not be sufficient to show that the Petitioner has otherwise met his burden to show that his proposed endeavor rises to the level of national importance.

national shortage. Additionally, we note that shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Because the Petitioner has not established through sufficient evidence in the record that his proposed endeavor meets the first prong of the *Dhanasar* framework, he has not demonstrated eligibility for a national interest waiver. Since the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues concerning whether he has established eligibility for the EB-2 classification, as well as eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. Therefore, we conclude that the Petitioner has not established that he is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.