U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31284026

Date: JUNE 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial

merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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. *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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the endeavor as a plan "to work as [s]enior [m]echanical [e]ngineer or [v]essel [o]perations [m]anager for offshore construction projects mainly linked to [o]ffshore [w]ind [f]arms." The Petitioner identified offshore wind projects that already exist and that are in development, at which he could work. The Petitioner summarized his qualifications and he provided generalized information regarding offshore wind farms. The Petitioner generally stated that "technological integration and sustainability acts as a catalyst for job creation within the sector." However, the record does not establish how the Petitioner's work at any particular offshore wind farm may have significant potential to employ U.S. workers who would not otherwise be employed at the referenced wind farms.

The Director concluded that "the proposed endeavor has substantial merit." However, the Director observed that, although "it is possible the [Petitioner's] work could have positive economic effects and could have the potential to create jobs, there has been no documentary evidence demonstrating this." The Director also noted that, although the record addresses whether the field in which the Petitioner proposes to work may have importance, it does not establish how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. Ultimately, the Director concluded that the record does not establish whether the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. Additionally, although the Director concluded the record satisfies the second *Dhanasar* prong, the Director also concluded that the record does not satisfy the third *Dhanasar* prong. *See id.* at 888-91.

On appeal, the Petitioner asserts that his prior generalizations regarding "how important the [e]nergy industry is" and information he provided regarding his "extensive background," including "the many milestones he accomplished for himself and others in the industry," establish the proposed endeavor has national importance. The Petitioner reiterates information regarding his qualifications and prior work experience, and generalized information regarding offshore wind farms.

The Petitioner also summarized the Administrative Procedures Act (APA), 5 U.S.C. § 551, et seq., and how it may be violated, without clarifying how the Petitioner believes the Director's decision on the underlying benefit request may have violated what he describes as "the procedures agencies must follow when creating, modifying, or repealing rules," contemplated by the APA. Because the Petitioner does not specifically assert that the Director's decision on the underlying benefit request violated the rulemaking procedures of the APA, nor does the Petitioner elaborate on how it possibly could have, we need not address the Petitioner's references to the APA further.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's references to his qualifications, including his prior work experience, are material to the second *Dhanasar* prong, whether an individual is well positioned to advance a proposed endeavor, which, the Director addressed. *See id.* at 888-91. However, the Petitioner's references to his qualifications, including his prior work experience, are immaterial to the first *Dhanasar* prong, whether the specific endeavor an individual proposes to undertake may have both substantial merit and national importance. *See id.* Because the Petitioner's references to his qualifications, including his prior work experience, are immaterial to determining whether the specific endeavor he proposes to undertake may have national importance, they do not satisfy the first *Dhanasar* prong. *See id.*

Next, the Petitioner's references to generalized information regarding offshore wind farms and "how important the [e]nergy industry is" relates to the industry or field's importance. However, as explained above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work. Instead, the issue is whether the potential prospective impact of the specific endeavor the individual proposes to undertake has the type of broader implications indicative of national importance. *See id.* at 889. The generalized information that the Petitioner references does not address the Petitioner, the specific endeavor he proposes to undertake, and how that specific endeavor he proposes to undertake may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances," "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," or other broader implications indicative of national importance. *See id.* at 889-90. Therefore, the generalized information the Petitioner references on appeal does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See id.*

We acknowledge that the offshore wind projects that already exist and that are in development, at which the Petitioner proposes to work, employ or plan to employ U.S. workers. However, merely proposing to work for an employer that already employs or plans to employ U.S. workers does not

establish "significant potential to employ U.S. workers or . . . other substantial positive economic effects" by virtue of a proposed endeavor. *See id.* The record does not establish how the Petitioner's work activities at any of the potential employers he identified would affect the respective entities' plans to employ U.S. workers. On the contrary, the respective entities appear to employ or plan to employ U.S. workers, regardless of whether they were to employ the Petitioner, too. Therefore, the record does not establish how the specific endeavor the Petitioner proposes to undertake would affect the respective entities' potential to employ U.S. workers, whether significantly or otherwise.

In turn, the record does not establish how the Petitioner's work for any of the potential employers would have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *See id.* On the contrary, the wind farms either already have been built or already have been designed by an individual or individuals other than the Petitioner. Even to the extent that the Petitioner's work may affect processes at a wind farm already built or designed by other individuals, the record does not establish how such work would have the type of broader implications that rise to the level of "national or even global implications within a particular field," contemplated by the first *Dhanasar* prong. *See id.* Relatedly, the economic effects the offshore wind farms at which the Petitioner proposes to work appear to result, whether currently or prospectively upon future operation, regardless of whether the Petitioner would work at any particular wind farm. Even to the extent that the Petitioner's work may affect the economic effects of whichever wind farm at which the Petitioner would work, the record does not establish how such effects would rise to the level of substantial positive effects indicative of national importance. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

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

ORDER: The appeal is dismissed.