U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31109265

Date: JUNE 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and consultant in the energy industry, 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 as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

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,[2] 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

[1] 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).

[2] *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).

- On balance, waiving the job offer requirement would benefit the United States.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

The Petitioner proposed to establish a company in Kentucky providing consulting services "for the development and management of energy efficiency projects that promote the use of alternative renewable energy sources and thus mitigate the impact of the use of fossil fuels as conventional energy sources." He stated that the purpose of his proposed endeavor was "to benefit professional electricians, civil engineers, architects, computer engineers, agricultural engineers and American companies that depend on or use electrical energy as the main source for their operation or business." In response to the Director's request for evidence (RFE), the Petitioner provided a letter from the [redacted] Chamber of Commerce inviting him to be a part of their team of renewable energy consultants.

The Director determined that the Petitioner's proposed endeavor was of substantial merit, and we agree. However, the Director concluded the Petitioner did not establish that his proposed endeavor had national importance.

On appeal, the Petitioner asserts that "ample evidence was provided that clearly and unambiguously speaks to the national importance" of his proposed endeavor and states that the Director did not "contemplate or discuss the totality of the evidence." Specifically, the Petitioner notes he provided articles that reflected government interest in his proposed endeavor and indicated his proposed endeavor "is intricately aligned with the United States' strategic goals for energy sustainability and efficiency." The Petitioner also asserts he provided documentation to corroborate the economic benefits of his proposed endeavor "by and through the personal statements submitted with the initial petition and RFE response."

The first prong of the *Dhanasar* 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, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar* at 889. We look for broader implications. An 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 889-890.

We acknowledge that the Petitioner provided several articles about national initiatives in the energy sector, including from the White House, the Office of Energy Efficiency and Renewable Energy, the United Nations, and the Environmental Protection Agency. However, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, the focus is on the "the specific endeavor that the foreign national proposes to undertake" and the endeavor's "potential prospective impact." *Id.* at 889. In *Dhanasar*, we gave significant weight to "probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests" and "detailed expert letters describing U.S. Government interest" in Dr. Dhanasar's specific research. *Id.* at 892. Here, the Petitioner has not provided similar evidence, such as the expert opinions, letters from government entities, or other similar probative

evidence detailing how his specific endeavor would impact a matter that is a subject of national initiatives. None of the submitted articles specifically mention the Petitioner's endeavor or discuss the government's interest in promoting the use of his company. Therefore, the Petitioner has not demonstrated the potential prospective impact of his specific endeavor to a matter that is the subject of national initiatives.

Moreover, while the Petitioner asserts that the submitted White House and other government documents support his work in advancing technical-economic business models, implementing environmentally beneficial projects, and combating climate change, he did not sufficiently explain and support with evidence how his proposed endeavor would have national impacts on these broad national and international issues beyond impacting only businesses that would work directly with him. The Petitioner further states that "[h]is plan to establish a company in [redacted] Kentucky, addresses a critical gap in a state with low levels of renewable energy implementation," and therefore, would "bolster the local economy but also aligns with federal objectives to enhance renewable energy usage across the nation." The Petitioner, however, has not provided evidence demonstrating that his proposed endeavor would operate on a scale rising to the level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively impact the economy, the Petitioner has not established how his specific endeavor stands to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its future clientele to impact his field, energy efficiency, the U.S. economy, or U.S. societal welfare more broadly at a level commensurate with national importance.

Upon review of his personal statements, we note that the Petitioner relies, in part, on his experience in the energy industry to establish the national importance of his proposed endeavor. However, the Petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work. The Petitioner further contends on appeal that the Director imposed "novel and undefined standards" by focusing on his skills and experience when assessing the first prong. However, as discussed, it was the Petitioner who asserted that the Petitioner's experience in the energy industry was relevant to demonstrating the national importance of his proposed endeavor, therefore, any alleged error in the Director's evaluation of the Petitioner's skills and experience in relation to demonstrating national importance is misplaced. *See generally Matter of O-R-E-*, 28 I&N Dec. at, 350 n.5 (citing *Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) (stating that error is harmless where there is no "reason to believe that . . . remand might lead to a different result" (citation omitted))).

The Petitioner also did not show that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record

does not demonstrate benefits to the U.S. regional or national economy reaching the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Finally, the Petitioner relies on *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) to support his assertion that the Director erred in failing to consider all the evidence in its totality. But the court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides reasoned consideration of the petition, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *See, e.g., Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention").

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.[3] The burden of proof is on the Petitioner to 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 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] *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 alternate issues on appeal where an applicant is otherwise ineligible).