U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30585778

Date: JUN. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 Petitioner established he is an advanced degree professional but had not established that a waiver of the required job offer, and thus that 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 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 (AAO 2016), provides the framework

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a 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
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

A. EB-2 Classification

The Director concluded the Petitioner established his eligibility for EB-2 classification as an advanced degree professional on the basis of his education and work experience, as defined by 8 C.F.R. § 204.5(k)(2). We agree with the Director's conclusion.

B. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Id.* at 889. 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.* The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

The Petitioner describes his proposed endeavor as continuing to provide consulting and advisory services, using his background as an industrial engineer and his over 20 years of work experience to develop "improvements to logistics processes through the application of models leveraged in heuristic techniques, application of descriptive statistics and integration of Constraint Theory (TOC) models" and "Slotting models," which he states are "easily cross-sector-compliant processes with significant process benefits." With these models, he asserts his proposed endeavor will contribute to American technological and economic competitiveness because these tools are used to improve supply chains, logistics, productivity, and minimize ergonomic risks in operations within manufacturing warehouses.

[2] *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).

He explains that his interest in providing these services in the United States lies in the fact that the "U.S. has the business and technological talen [sic] to contribute greatly to technological solutions to global supply chain challenges."

As the endeavor's merit may be demonstrated in a range of areas, we agree with the Director that the Petitioner's endeavor has substantial merit. *Id.* However, as discussed below, the Petitioner has not established that his proposed endeavor is of national importance.

On appeal, the Petitioner provides a brief and asserts the Director imposed "a novel or otherwise undefined and arbitrary requirement that is not present in the controlling precedent or relevant regulations in order to serve as a bar for approval of a petition." To support his contention, the Petitioner cites to *Love Korean Church v. Chertoff*, 549 F.3d 749, 753–54 (9th Cir. 2008), a case in which the Ninth Circuit determined that the AAO's interpretation of an eligibility requirement was inconsistent with the governing regulation. Here, the Petitioner's specific concerns arise from the Director's analysis of reference letters submitted by the Petitioner under the first *Dhanasar* prong, even though the letters were submitted to establish his eligibility under *Dhanasar's* second prong. However, the Petitioner's concerns are unfounded because the Director analyzed the letters to determine if the Petitioner's prior work demonstrated any broader impacts on his profession, which is the focus of *Dhanasar*'s prong one analysis. Furthermore, in their prong one analysis, after considering the Petitioner's reference letters, the Director analyzed the industry articles and reports submitted by the Petitioner to establish the national importance of his proposed endeavor. Finally, to the extent the Petitioner submitted these letters for the sole purpose of establishing eligibility under prong two, the Director concluded he met the second prong of the *Dhanasar* framework. As such, any error on the part of the Director was harmless.

The Petitioner further contends that the Director failed to "discuss all elements of the evidence submitted [with the petition] to the disadvantage of the Petitioner and is a significant defect . . .." The Petitioner's main concern is that the Director did not specifically mention his business plan. Moreover, the Petitioner observes that federal courts have noted that decisions failing to contemplate or discuss the entirety of the evidence in a filing amount to critical error in the adjudicative process, and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1233 (E.D. Mich. 1994), in support of his contention. The court's opinion in *Buletini* referred to the Director's failure to consider all the *forms* of evidence that the petitioner in that case submitted. *Buletini*, 860 F. Supp. at 1232–33. However, the court in *Buletini* did not determine that USCIS was required to discuss each and every piece of evidence within the record, as the Petitioner appears to assert. As such, the Petitioner's reliance on this decision is unpersuasive.

Although we agree with the Petitioner that the Director did not directly discuss every piece of evidence, the Director did provide a comprehensive analysis of the evidence and the Petitioner has not established how those omitted documents demonstrated the national importance of his endeavor or his eligibility for the benefit sought. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir.

2009); and *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009). Thus, an omission of a specific document is not necessarily outcome determinative or legal or factual error.

The Petitioner also argues that the Director imposed novel criteria not required under the *Dhanasar* framework when they determined that the proposed endeavor needs to have a "broader impact on the field." Upon de novo review, the Director accurately articulated and considered the *Dhanasar* framework requiring a proposed endeavor's broader impacts on the field beyond its clients. Indeed, *Dhanasar* instructs that "we look for broader implications" to determine if an endeavor is of national importance. *Id.* at 889. Furthermore, in *Dhanasar*, we determined that a STEM teacher's proposed endeavor had substantial merit, but that the record did not establish his teaching activities would impact the field of education more broadly. *Id.* at 893. Similarly, here, while the services the Petitioner intends to provide may be of value to his clients, he has not established through independent evidence that his endeavor will impact the field of supply chain management more broadly. *See id.; see also Matter of Chawathe*, 25 I&N Dec. at 375-76. The Director's decision correctly articulated this standard and explained the reasons why the Petitioner had not established his burden.

Next, the Petitioner contends that the Director erred by failing to consider the totality of the evidence submitted to establish the national importance of his proposed endeavor. He asserts that the Director disregarded reputable industry sources, which directly spoke to the proposed endeavor's national importance because his aim is to focus on optimizing the supply chain-related processes of U.S. companies, which will improve their overall productivity, and impact the economic activity of small businesses, which the Administration deems "crucial to economic prosperity, workforce development, and even national security." He contends that his personal statements contain "ample arguments supported by objective documentary evidence to support the assertions . . . with respect to the economic benefits of the [] proposed endeavor." The Petitioner's focus is to help small and medium-sized businesses develop and implement strategies to deal with excess inventory, reduce costs, and improve product delivery. He cites specifically to his business plan as the document that most clearly demonstrates his endeavor's broader impact from an "economic standpoint."

The Petitioner's business plan outlines his professional and educational background, as well as his proposed endeavor and the impacts he asserts will follow. The Petitioner intends to start a company, [redacted] (the Company), located in [redacted] Georgia, in which he will serve as the co-owner and general manager of consulting logistics as well as working on the Company's business development and growth. The plan describes his choice of Georgia based on the state's strong presence of small and medium sized businesses, entrepreneurs, as well as its diverse culture of innovation and strong professional base in various sectors such as information technology, logistics, and manufacturing. The Company will provide the following services: consulting service in the supply chain management specialty; design and implement solutions that will have an effective, efficient, and immediate purpose for small and medium sized companies being served; warehouse operations execution system and the information system network between areas of operations relevant to inventory management; supply chain analysis and optimization; logistics network design; transportation management; warehouse and inventory management; information technology; change management; and human resources training.

In *Dhanasar,* we 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. To bolster his statement that his endeavor will provide "substantial positive economic effects," the Petitioner asserts that the Company will be located within a Small Business Administration designated historically underutilized business zone (HUBZone). The HUBZone program promotes business growth in underutilized business zones with the goal of awarding three percent of federal contract dollars to companies that are HUBZone certified. *See* https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program. We acknowledge that by design, operating a business in an HUBZone offers several advantages including eligibility for federal contracting preferences, access to set-aside contracts, and potential tax incentives.[3] However, businesses seeking HUBZone certification must be owned and controlled by U.S. citizens, a community development corporation, an agricultural cooperative, or an Indian tribe. *Id.* Further, the business's principal office must be located in the designated HUBZone, and it must be the location where the greatest number of employees perform their work.[4] Here, there is no indication that the Petitioner's business meets the requirements for HUBZone certification. Further, to the extent that the Petitioner equates his business being in a HUBZone with *Dhanasar's* emphasis on job creation leading to "substantial positive economic effects particularly in an economically depressed area," the evidence does not establish how merely locating his office in an HUBZone is sufficient to meet this standard. And, even if the Company were to yield new jobs in a HUBZone location (a fact he has not established), the economic impact from this potential hiring is too amorphous to be considered of national importance as contemplated in *Dhanasar*. *Id.* at 890.

We acknowledge that the Petitioner's business plan projects the creation of numerous jobs, revenue, and taxes paid by its fifth year of operation, however the plan does not sufficiently detail the basis for the revenue and staffing projections, nor does it adequately explain how the revenue and staffing projections will be realized.[5] *Matter of Chaw*athe, 25 I&N Dec. at 376. As such, without more, he has not established that his endeavor will have substantial positive economic effects at a level commensurate with national importance. *Dhanasar* at 890.

Apart from job creation and boosting the economy, the Petitioner's business plan highlights the following additional positive impacts that will stem from his endeavor: improving performance in all stages of logistics, distribution and sourcing chains of American small and medium sized businesses served; international trade development; infrastructure development; environmental impact (due to a reduction in the carbon footprint from more streamlined logistics); increased profitability and sustainability of American small and medium-sized companies; increased purchasing power and standard of living of U.S. citizens; contributing to the U.S.'s gross domestic product and social welfare benefits for U.S. citizens and communities; and its alignment with USCIS's STEM policy.

---

[3] *See* https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program.

[4] *Id.*

[5] The Petitioner's business plan specifies that by its fifth year of operation, the Company will create 14 jobs including: owner and general manager, supply chain consultant, logistics analyst, operations manager, procurement specialist, logistics & distribution manager, data analyst, administrative assistant, customer service representative, quality assurance specialist, and business development specialist. In addition, he advises the Company will contract services from certified public accountant(s), legal advisor(s), financial advisor(s), human resources specialist(s), marketing agenc(ies), and other specialized industry contractors. In terms of revenues, he projects that by its fifth year of operation, the Company will have: $1,065,439 in payroll expenses; $1,373,789 in operating expenses; $232,779 in total taxes; $170,247 in net profit; and $1,617,000 in sales/projected revenues.

In support of these claims, the Petitioner relies on industry, government, and research reports to establish the national importance of his endeavor, and the broader impacts that will flow from it. He claims that, for instance, the Council of Supply Chain Management Professionals' report "Importance of Supply Chain Management," along with several government White House Fact Sheets discussing supply chain disruptions and the importance of small businesses to our economy, provides sufficient objective support to establish his burden. We acknowledge that the U.S. government has been concerned with supply chain issues, especially after the negative impact of the COVID-19 pandemic on logistics and supply chains. However, the fact that a petitioner is qualified for and may accept a position in an industry or sector that is the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. Furthermore, and as stated above, it is not the industry or field that the individual will work in but the prospective impact the proposed endeavor will have that is the focus of prong one. None of the reports provided discuss the Petitioner's specific endeavor or its impact. As such, while the reports provide a background to better understand the industry or field in which the Company will operate, they are insufficient to establish the national importance of his endeavor.

Upon de novo review, we acknowledge that the Petitioner's proposed endeavor has positive objectives, and while his assertions underscore the substantial merit of his endeavor, they do not establish that the Company's services have a potential prospective impact beyond the individual clients the Company will serve. We further note that his assertions with respect to the "urgent need to attract additional STEM talent to the United States to strengthen the U.S. economy and its technological competitiveness with China and other developed nations," and the quotes he takes from various Biden Administration statements addressing the need for STEM graduates for the United States to remain competitive, are not directly addressed by his proposed endeavor. Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *Dhanasar* at 890. Here, however, the record does not suggest that the Petitioner intends to advance STEM technologies and research in supply chain management. While the Petitioner intends for the Company to offer supply chain consultant services to its clients, he has not established how the Company would affect STEM employment levels in his industry or attract STEM talent consistent with national importance or the government initiatives he references.

Lastly, throughout the record of proceedings, the Petitioner asserts that the "endeavor's importance is established by the importance of the supply chain sector." 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, such as those resulting from certain improved manufacturing processes or medical advances." *Dhanasar* at 889. Here, we considered the Petitioner's assertion that he will create "innovative technological processes such as fusion of constrain theory systems, of intelligent accommodation (Slotting)," however, these terms are not sufficiently defined or explained to establish that his services are innovative or differ from the supply chain and logistics methods already in practice in the United States. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

In sum, the Petitioner has not established that his proposed endeavor stands to sufficiently extend beyond his clients to impact his field more broadly at a level commensurate with national importance.

Nor has he shown that the work he proposes to undertake offers original innovations that contribute to advancements or otherwise has broader implications for his field. Furthermore, the Petitioner has not demonstrated that his specific 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 directly attributable to his work, the Petitioner has not established that benefits to the regional or national economy resulting from his endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

C. *Dhanasar*'s Second and Third Prongs

As the Petitioner has not established the national importance of his proposed endeavor, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.