U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31109455

Date: JUN 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 a waiver of the required job offer and thus of the labor certification, would not be in the national interest. 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).

Once 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[1], 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

The Director determined that the Petitioner qualified as an advanced degree professional, and further concluded the Petitioner's proposed endeavor has substantial merit but did not sufficiently satisfy it is of national importance under *Dhanasar's* first prong. Based on our de novo review of the record, we conclude the Petitioner has not sufficiently demonstrated the substantial merit and the national importance of his proposed endeavor under the first prong. Specifically, we conclude that the Petitioner has submitted insufficient and inconsistent evidence regarding the substantive nature of his proposed endeavor. While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner indicated in part 6 of the petition to "see supporting documents for description of endeavor." In the initial filing, the Petitioner submitted a document entitled, "Reduction of environmental impact by preventing the contamination of aquifers through the redesign of wastewater collection wells." In this document, the Petitioner provided a brief explanation of hydraulic fracturing (fracking) which is a technique utilized to extract natural gas or oil from rock deposits that were previously impossible to exploit. The Petitioner explained that fracture is achieved by injecting water mixed with solids and chemicals at high pressures, but consequently, contaminated water is treated to eliminate contaminants. The Petitioner further explained that although fracking is extremely important for the oil and gas industry, it also imperative to take measures to mitigate environmental impacts and the intention of "this project is to provide an alternative to eliminate the possibility of contamination of aquifers by the injection of water in wastewater collective wells." The Petitioner noted that if the contaminated water does not reach the condition required to be reused, the water will be reinjected into the subsoil which may contaminate important bodies of water. The Petitioner further stated that the "project proposed consists precisely in providing a solution to this problem by redesigning the collection wells, taking them to greater depths, moving the injection position away from the producing formations." He also explained that in Mexico there are stones that are ideal for wastewater injection so a "high-resolution seismic survey of dimensions greater than projected area to be exploited is required," and "once the formation have been characterized, the target depth for injection will be determined." Then the design and construction of the wells will begin. In a separate personal statement, the Petitioner explained that his project will take place in the [redacted] located in Pennsylvania, Virginia, and Ohio.

In response to the Director's request for evidence (RFE), the Petitioner submitted a document entitled, "Detailed description of the proposed endeavor" that provided a one paragraph explanation of the proposed endeavor where the Petitioner will "leverage my extensive experience in engineering, petroleum

[1] *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 to be discretionary in nature).

cultivation, drilling projects, and environmental impact assessments in order to innovate, improve, and transform United States oil extraction processes in order to improve their economic returns, while reducing environmental impacts." He further stated he will focus on novel techniques to prevent spills or contamination as a result of fracking, optimize and improve fracking techniques in the United States, and disseminate his work through publications and presentations at relevant conferences.

In a personal statement in response to the RFE, the Petitioner explained that his proposed endeavor is to work as a design specialist and/or create a company in the United States to help the energy industry reduce cost by designing and implementing advance drilling and production techniques that minimize waste and pollution. He also noted a shortage of leaders in the oil and gas industry in the United States. Further, the Petitioner indicated he will conduct his professional work in Opportunity Zones located in Texas.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.

Here, the nature of the Petitioner's proposed endeavor is unclear. Although the Petitioner provided general information of the fracking process, including consequences and possible solutions for a more sustainable process, the Petitioner does not clearly explain his proposed endeavor. For example, in the initial petition, the Petitioner indicated he will work on a project to prevent the contamination of aquifers. However, the Petitioner does not explain if he will work on this project by starting his own company, or as a consultant to other companies, or as an employee of a company. In addition, the project includes several steps such as organizing a seismic survey, determining where the new wells should be located, engineering the new wells, managing the project, and much more. The Petitioner does not explain his part in this project, for example, whether he will consult the whole project, run the seismic survey, be part of the engineering team that construct the wells, or develop and implement the solutions. The Petitioner does not explain in any detail his role in this very large project. Further, the Petitioner stated the project will take place in Pennsylvania, Virginia, and Ohio but he does not explain how his proposed endeavor in this project will span in three different states.

Further, in response to the Director's RFE, the Petitioner provided additional evidence of his proposed endeavor that provided some new information but still did not sufficiently explain his proposed endeavor. For example, the Petitioner stated he would work as a design specialist helping companies and/or create a company in the United States. Although he stated he will work as a design specialist or create a company, he still did not provide sufficient information of his specific role within the fracking process as a design consultant or company owner. In addition, the Petitioner stated he will work on novel techniques but did not sufficiently explain those techniques and how they were novel and not available in the United States. Further, some of the new information directly conflicted with the information submitted with the initial filing. For example, in response to the RFE, the Petitioner

stated he will work in Texas which directly conflicts with his previous statement indicating he will work on a project located in Pennsylvania, Virginia and Ohio.

We acknowledge the documents the Petitioner provided regarding the importance of the oil and natural gas industry in the United States. However, when determining whether a proposed endeavor would have substantial merit or national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889-890. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("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.") Simply being employed in an occupation does not constitute an endeavor for the purposes of these proceedings. *Id.*

Importantly, the Petitioner has not provided information sufficient to illustrate how he will realize his goal of offering novel techniques in the fracking process in the United States. In addition, as noted, the Petitioner did not provide sufficient information of his proposed endeavor beyond a general description of the fracking process and possible solutions for environmental impacts. He also has not clearly explained where he will work in the United States since the record provided inconsistent information. The Petitioner must resolve this inconsistency and ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The testimonial evidence in the record, such as the recommendation letters, do not analyze the Petitioner's specific proposed endeavor or offer evidence of its impact. Instead, they outline the contributions he made to the industry in his previous employment and general assertions of potential to further enhance engineering within the fracking process. The record does not contain sufficient evidentiary basis to conclude that the effects of his specific proposed endeavor will rise to the level of national importance.

Without more information about his specific proposed endeavor and how he will apply his knowledge and experience in the United States, the Petitioner has not sufficiently established his proposed endeavor sufficient for us to determine that his work in the United States will have substantial merit and national importance. In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance under the *Dhanasar's* first prong. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The Petitioner has not done so here.

The Petitioner asserts on appeal that the Director abused their discretion in failing to address all evidence, citing *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) in support. The court in *Buletini*, however, 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 a reasoned consideration to the petition, and has made adequate findings, it will not

be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); see also *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). We conclude the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

Since we are unable to specifically identify the Petitioner's proposed endeavor, we are likewise unable to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. Here, while the Petitioner's initial statements reflect his intention to participate in a project to improve environmental condition from fracking, and revised statements indicate that he intends to consult or start a company and implement novel techniques to improve the fracking process, he has not offered sufficient information and evidence to demonstrate that the prospective impact of either endeavor rises to the level of national importance. Furthermore, the Petitioner has not sufficiently demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner claims the oil and gas industry play a significant role in creating job, directly and indirectly. However, he provided no specific information or data relevant to economic effects potentially resulting from his proposed endeavor.

Because the Petitioner has not provided consistent information regarding his proposed endeavor, we cannot conclude that he meets the first prong of the *Dhanasar* precedent decision. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the third prong of *Dhanasar's* analytical framework. *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 the applicant did not otherwise meet their burden of proof).

## III. CONCLUSION

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

**ORDER:** The appeal is dismissed.