U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31073743

Date: JUNE 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability, 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 qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits a statement and asserts that he is eligible for the benefit sought. 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.

To qualify for a national interest waiver, a petitioner must first show eligibility 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. 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, 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.

The Director determined that the Petitioner qualified as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set

forth below, we conclude that the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.

The first *Dhanasar* prong, 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

In the initial filing, the Petitioner listed his proposed profession as health and safety engineer on the Form I-140, Immigrant Petition for Alien Workers, and stated he planned to promote worksite or product safety "by applying knowledge of industrial processes, mechanics, chemistry, psychology, and industrial health and safety laws." The Director issued a request for evidence in which they requested, in part, clarification as to the substantive nature of the Petitioner's proposed endeavor, finding that the Petitioner's statement and the evidence submitted did not establish the specific endeavor the Petitioner planned to undertake. While the Director noted that the Petitioner had referenced his experience, certifications, and general duties of a health and safety engineer, the record failed to establish the planned activities the Petitioner proposed to undertake in in the United States.[1] In response to the request for evidence, the Petitioner submitted a statement where he asserted that he would be "specializing in the promotion and prevention of occupational and environmental risks." He also submitted a business plan detailing that he would establish and develop his own consulting company that would specialize in occupational safety, health, environment, and quality, and reports and articles in support of the Petitioner's claimed proposed endeavor.

The Director denied the petition, concluding that the record did not establish that the Petitioner qualified for a national interest waiver because he did not meet the 3-prong *Dhanasar* framework. In regard to prong one, the Director determined while the Petitioner's proposed endeavor had substantial merit, the record did not demonstrate the Petitioner's proposed endeavor had national importance, as the record lacked details as to what the Petitioner intended to do as a health and safety engineer in the occupational safety industry. The Director concluded that the Petitioner had not established that the potential prospective impact of the Petitioner's specific proposed endeavor to develop his consulting company had implications beyond his own business, its clients, its employees, and the individuals for whom the Petitioner would provide his services.

[1] The Director also requested additional documentation to establish that the Petitioner was eligible 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.

On appeal, the Petitioner generally asserts that the Director erred in their conclusion that he is not eligible for the requested national interest waiver. The Petitioner also contends that the Director is requiring the Petitioner to establish eligibility for approval "beyond any reasonable doubt," rather than under the preponderance of evidence standard normally used in immigration proceedings, and is violating his due process.

The standard of proof for the EB-2 immigrant classification is preponderance of the evidence. *Chawathe* at 375-376. In putting forward the argument that the Director did not correctly apply this standard, the Petitioner does not explain exactly how the standard was wrongly applied. The Petitioner argues generally that in determining the record did not establish the proposed endeavor was of national importance, the Director misapplied the standard. The Petitioner does not support this assertion with specificity as to the record or to the Director's conclusions. Further, in asserting that the decision to deny his petition is "arbitrary and capricious" and denies him due process, the Petitioner does not specify how the decision violates due process or otherwise support this assertion.

We adopt and affirm the Director's decision as it relates to the first prong of the *Dhanasar* framework as the record does not sufficiently establish the Petitioner's specific endeavor to demonstrate the national importance of his proposed endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Petitioner's general objections on appeal regarding his eligibility for the EB-2 classification, without identifying any specific errors on the part of the Director, are insufficient to overcome the well-founded and logical conclusions the Director reached based on the evidence submitted by the Petitioner. The Petitioner has not articulated on appeal how the Director failed to give proper weight to the evidence.

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning eligibility under the *Dhanasar* framework, as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.