U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31281922

Date: JUNE 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a food safety consultant, seeks classification as a member of the professions holding an advanced degree. 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 attached to this EB-2 classification. *See* section 203(b)(2)(B)(i) of the Act. 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 although the Petitioner qualifies as an advanced degree professional, the record did not establish that a waiver of the job offer requirement is 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 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 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 USCIS may, as a 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 concluded that the Petitioner established eligibility for the EB-2 classification as an advanced degree professional, based upon obtaining the foreign equivalent of a master's degree in business management. However, the Director determined that the Petitioner did not establish any of the three required prongs of the *Dhanasar* analytical framework and therefore did not qualify for a national interest waiver. On appeal, the Petitioner submits a brief in which he asserts that he has established his eligibility.

The Petitioner states that his proposed endeavor "is to build on my extensive experience in packaging manufacturing processes for the food industry to enhance the cycle of continuous improvement of the processes of companies in the food industry." The Petitioner states that he will advise companies on food safety standards and assist them in better compliance with food safety practices. The Petitioner states that he plans to "disseminate my work in furtherance of my proposed endeavor and contribute to continue advancements in my field through conferences, tutorials and focused training, so the socioeconomic benefits will be raised, initially in Florida . . ., but with a national projection." The record also contains a business plan for the Petitioner's food safety consulting business.

Regarding the substantial merit of the proposed endeavor, the Director determined that the Petitioner did not establish this requirement. Specifically, the Director concluded that continuing employment in one's position, field, or industry is not an endeavor sufficient to evaluate under the *Dhanasar* framework, and that the Petitioner therefore impeded USCIS' determination of whether the endeavor has substantial merit.

An endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. *Matter of Dhanasar*, 26 I&N Dec. at 889. Based upon the evidence in the record of the importance of food safety, we conclude that the proposed endeavor of working with companies to improve their food safety practices has substantial merit. We withdraw the Director's finding to the contrary and conclude that the Petitioner has established this requirement.

In concluding that the Petitioner did not establish the national importance of the proposed endeavor, the Director stated that in this determination, the relevant question is not the importance of the field, industry, or profession in which the individual will work, but the specific endeavor that the individual proposes to undertake. The Director noted that the Petitioner emphasized his years of experience and

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and the Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

the impact that his endeavor will have on his clients and customers but not on the broader field or industry. The Director also concluded that the Petitioner did not establish the economic benefits of the endeavor have the potential to rise to national importance.

On appeal, the Petitioner claims that the Director's analysis reflects a "misunderstanding and misapplication of law." As an example of this the Petitioner claims that the Director improperly conflated the Petitioner's proposed endeavor with his proposed employment. The Petitioner also claims that the Director did not examine the entirety of the evidence presented and did not discuss all of the evidence submitted. Finally, the Petitioner asserts that the evidence submitted does establish the national importance of the proposed endeavor.

First, the Petitioner states on appeal the proposed endeavor is "plainly different" from the proposed employment that the Petitioner seeks to hold in furtherance of the endeavor. The Petitioner states that his employment as a consultant should only be considered the "vehicle" by which he will further the endeavor. The Petitioner acknowledges that the proposed endeavor is "intertwined with its implementation," but contends that limiting the national importance analysis only to the Petitioner's work improperly narrows "the examination to practical considerations, neglecting the broader implications" of the endeavor.

We appreciate the distinction that the Petitioner draws between the proposed endeavor and the employment that the Petitioner intends to hold in furtherance of that endeavor. Additionally, we acknowledge that the Petitioner hopes that his proposed endeavor will have an impact on the field beyond the clients of his consulting business, based upon his statement that he will disseminate his work "through conferences, tutorials, and focused training." But we do not agree that consideration of the way in which the Petitioner intends to implement his endeavor – specifically, by establishing this consulting business – improperly limits the scope of the analysis. Indeed, the Petitioner does not explain how else we would assess the potential prospective impact of the endeavor without considering the business plan, the work he intends to do, or the other ways in which he seeks to implement his endeavor. The Petitioner summarizes the endeavor on appeal as being "to build upon my extensive experience in packaging manufacturing processes for the food industry to enhance the cycle of continuous improvement of the processes of companies in the food industry." While we conclude that such an endeavor has substantial merit, this statement is not specific or detailed enough for us to assess the potential prospective impact of it in the abstract, without considering the specific ways in which the Petitioner intends to implement this goal.

Second, the Petitioner claims that the denial is deficient because the Director did not consider the entirety of the evidence in the record. The Petitioner states that the failure to consider all the relevant evidence submitted has been found to be an abuse of discretion and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mi. 1994). While we agree that an adjudicator should consider the relevant evidence in the record,[2] we also note that U.S. district court decisions, such as the one the Petitioner cites, are not binding precedential authority. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). More importantly,

[2] *See* 8 C.F.R. § 103.2(b)(1).

however, the Petitioner does not sufficiently support his claim that there was relevant evidence that the Director did not consider.

To support this claim, the Petitioner states that the petition included "evidence from reputable industry and U.S. government sources," such as DeltaNet International, the United Nations, and the U.S. Food and Drug Administration regarding the importance of food safety and hygiene in reducing food borne illnesses and other pathogens. The Petitioner also submitted evidence from the U.S. Department of Agriculture regarding the impact of the agriculture and food industries on the U.S. gross domestic product (GDP) and employment. The Petitioner contends that this evidence demonstrates that the proposed endeavor is in line with U.S. government priorities and that it establishes the endeavor's national importance. But the Director acknowledged that the Petitioner submitted industry reports, along with other evidence. While the Director may not have specifically named each piece of evidence in the record, this is not indicative of a failure to consider the evidence. *See 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."); *see also 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)); *Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (joining the Seventh and the Federal Circuit Courts of Appeals in presuming that the Board reviewed all of the evidence of record). Therefore, we do not find sufficient support for the Petitioner's claim that the Director failed to consider all of the evidence in the record.

Moreover, we agree that the articles and evidence of government priorities submitted by the Petitioner do not establish the endeavor's national importance. This evidence provides background information about the importance of food safety. However, this evidence relates only to the food packaging and manufacturing sector in general and not the Petitioner's specific proposed endeavor. We agree with the Director that in determining whether a proposed endeavor has 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." *See Matter of Dhanasar*, 26 I&N Dec. at 889. These articles and reports do not discuss the Petitioner's specific proposed endeavor, do not help demonstrate the potential prospective impact of the endeavor on the issue of food safety, and do not otherwise demonstrate the national importance of the endeavor.

Finally, the Petitioner makes the broad claim that the record contains "ample documentation to corroborate the economic benefits of the Petitioner's proposed endeavor by and through the personal statements submitted." The Petitioner asserts that these statements "contained ample arguments supported by objective documentary evidence to support the assertions therein with respect to the economic benefits of the Petitioner's proposed endeavor." But the Petitioner does not describe the specific evidence that demonstrates these benefits. The objective documentary evidence in the record, such as the articles and reports discussed above, do not reference the Petitioner's proposed endeavor, and do not sufficiently demonstrate the national importance of the endeavor. Contrary to the Petitioner's broad claim otherwise, we conclude that the record does not contain sufficient evidence to establish that the effects of his proposed endeavor may rise to the level of national importance.

The Petitioner's claims on appeal do not overcome the basis for the Director's findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and thirds *Dhanasar* prongs. *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 is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.