U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31281724

Date: JUN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a facility manager, 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 the record did not establish the Petitioner's eligibility for the requested national interest waiver. 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 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 determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

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.* We agree with the Director's conclusion that the proposed endeavor has substantial merit as it falls within the range of areas of substantial merit, namely business. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not establish its national importance.

The record reflects that the Petitioner intended to work in the United States as a facility manager. In the initial filing, the Petitioner submitted a professional plan indicating his intent to use his "extensive experience in [f]acilities [m]anagement ([s]oft [s]ervices), [m]aintenance ([h]ard [s]ervices) and [f]ood [s]ervices by developing and implementing successful commercial projects in these areas." According to the Petitioner, his work would "benefit the United States by providing new business solutions, creating innovative products, promoting efficiency, reducing costs, increasing profitability, generating innovation, and enabling business growth." The Petitioner intended to "employ [his] facilities management comprehensive knowledge to continuously seek, identify and implement innovative solutions and tools for the benefit of companies." In asserting the national importance of his work, he emphasized several of his past projects, including implementing QR code technology to monitor facility activities through a dashboard and his coordination of the simultaneous sanitization of four corporate facilities during the COVID-19 pandemic to avoid disrupting the operations of Brazil's largest private organization. Ultimately, the Petitioner asserted his endeavor would broadly impact the facility management industry and the U.S. economy by enhancing profitability, increasing customer portfolios for U.S. companies, and enabling business growth. In support of his endeavor, the Petitioner also provided an expert opinion letter and multiple letters of recommendation.

In response to the Director's request for evidence (RFE) requesting clarification on the substantive nature of the Petitioner's proposed endeavor, the Petitioner submitted a new professional plan, stating that he intended to develop "[t]echnical and [c]ommercial [p]roposal[s], including [p]rojects with the

[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).

highest productivity, technology and innovation in equipment and systems, aiming at saving water consumption, saving energy consumption, [and] reducing carbon emissions, among other environmental impacts that can bring substantial impact to the regional and national economy." In doing so, he planned to emphasize "sustainable facilities that deliver safe, healthy work environments," and "focus [his] activities on introducing innovative methodologies capable of improving processes around how companies delivery their services and products by projecting and maintaining sustainable facilities." Again, the Petitioner relied on his past projects as examples of the type of work he could perform, asserting his endeavor would involve the elaboration and execution of projects that significantly reduce water usage in the cleaning process, reduce organic waste from restaurant operations, and the implementation of mechanized cleaning of floors, among other innovations to improve operations. Given the various processes that facility managers coordinate, the Petitioner claimed that his endeavor would result in numerous benefits to businesses, including reduction of operational costs, improvement of organizational culture, enhancement of security and preparedness, asset management, space optimization, and a reduction in downtime.

The Director concluded that the record did not demonstrate the national importance of the Petitioner's proposed endeavor because the Petitioner did not show his endeavor would lead to broader implications to the field of facility management, have significant potential to employ U.S. workers, or otherwise result in substantial positive economic effects as contemplated in *Dhanasar*.

On appeal, the Petitioner claims the decision "contains numerous erroneous conclusions of both law and fact," and generally asserts that the Director erred in their conclusions regarding the limited impact of his endeavor. Yet, beyond expressing his general disagreement with the Director's conclusions, the Petitioner does not identify with specificity how the Director erred in their analysis. Instead, the Petitioner reasserts the same contentions, directly copying and pasting significant excerpts from his RFE response on appeal. An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). The absence of this alone is grounds for dismissal. *Id.* Nevertheless, for the reasons discussed below, and upon our de novo review, we agree with the Director that the record does not establish, by a preponderance of the evidence, the Petitioner's proposed endeavor has national importance.

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 contesting the Director's conclusion regarding the limited implications of his proposed endeavor, the Petitioner asserts that "[f]irst and foremost, [he] possesses an extensive academic background and professional experience as a [f]acility [m]anager, making him exceptionally qualified in this field." But this misapplies the *Dhanasar* framework. While it is true that a petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, the second prong does not evaluate the prospective impact of an endeavor, but instead "shifts the focus from the

proposed endeavor to the foreign national." *Id.* As such, while a Petitioner's background may be helpful in describing the nature of their field and prior work, it is not sufficient to establish the national importance of their proposed endeavor. Likewise, the Petitioner's reliance on his prior projects does not establish the broader implications of his proposed endeavor as he has not shown how these projects resulted (or could result) in broader implications to the field beyond the benefits realized by his former employers and customers.

And although the Petitioner's statements in the record reflect his intention to "contribute to the overall sustainability of businesses, leading to cost savings and . . . [a] reduc[tion of] the negative impact of waste disposal," he has not provided sufficient information and evidence to demonstrate that the positive impact he may have on the business operations of his prospective employer(s) or customers would rise to the level of national importance. For example, the Petitioner asserts that his work as a facility manager will "optimize facility management processes, resulting in higher productivity, better ergonomics, and reduced resource consumption, [which will] not only contribute to environmental sustainability but also improved the overall efficiency and cost-effectiveness of building operations." However, he does not provide further explanation regarding how these benefits, even if realized, would have broader implications to the field. While he states his intent to "develop technical and commercial proposals" that would result in cost savings and sustainable practices, he does not provide an explanation as to the specific nature of these projects to allow for a determination of their impact to the field. Generalized conclusory statements that do not identify a specific impact to the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). 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. *Dhanasar* at 893. Here too, we agree with the Director that the record does not show the Petitioner's proposed endeavor stands to sufficiently impact the facility management field more broadly at a level commensurate with national importance.

Moreover, while the Petitioner's intent to utilize sustainable methodologies, including reducing water usage in the cleaning process, saving energy, and reducing gas emissions in his work may be admirable and align with federal initiatives aimed at promoting sustainable facility management, it does not establish that his work would rise to the level of national importance contemplated in *Dhanasar.* The Petitioner has not shown with sufficient evidence how these methodologies will impact the industry beyond the operations of his immediate employer(s) or customers.

The record also does not establish that the Petitioner's endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890. Notably, in asserting the economic impact of his endeavor, the Petitioner relies primarily on the economic impact of the facility management industry, stating "the [f]acility [m]anagement [m]arket . . . is expected to reach USD 1505.6 billion in 2027." But absent broad statements that his endeavor will result in substantial positive economic effects by "creating new jobs and providing opportunities for training and career development," the Petitioner has not provided projected employment numbers, nor explained with specificity what "opportunities for training and career development" his endeavor will create. Although any basic economic activity which may result from the Petitioner's work has the potential to positively impact a local economy, the Petitioner has not provided a sufficient explanation of the prospective impact directly attributable to his proposed

work, or established how his endeavor will impact an economically depressed area. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Finally, we reviewed the expert opinion letters from Dr. V-L- and Dr. M-E- and conclude that they provide little probative value in establishing the national importance of the Petitioner's endeavor. While Dr. V-L- concludes that the Petitioner would "work in an area" of national importance, they did not elaborate on how the benefits of his specific work would extend beyond the Petitioner's immediate employer(s) or customers, nor did they provide justification for their conclusion that the proposed endeavor will have broad implications to the field. Moreover, both expert opinion letters rely primarily on the importance of the facility management industry to establish the national importance of the endeavor. For example, Dr. M-E- opines that, "[e]ffective facility management cannot only realize cost savings through creating efficiencies . . . but it also has a positive impact on workforce safety and experience resulting" [and] "investing in and managing sustainable facilities has a net positive impact on the economy." Yet while Dr. M-E- addresses the Petitioner's past projects and successes, he does not elaborate on how the Petitioner's specific endeavor will offer "national or even global implications," to these industries. *Id.* at 889. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letters lacks relevance with respect to the national importance of the Petitioner's proposed endeavor.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.