U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30663091

Date: JUNE 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a mergers and acquisitions professional in the oil and gas industry, 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 that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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 qualify for the underlying EB-2 visa classification, a petition must first establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) 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. A U.S. 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).

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,[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.

Id.

II. ANALYSIS

A. EB-2 Classification

The Petitioner is a mergers and acquisitions professional in the oil and gas industry. He submitted a diploma and transcripts for his master's degree in business administration from the [redacted] The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree and we agree.

B. National Interest Waiver

1. Substantial Merit

The first 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. The Petitioner, "[i]ntends to perform . . . duties in an executive role with a U.S. private equity fund, investment bank, management consulting firm or analytic agency that engages in, or advises on, Mergers & Acquisitions (M&A) in the international oil and gas sector." The record contains industry articles and reports on current issues facing the oil and gas industry and its impact on the economy. We conclude the Petitioner's proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Director determined that the record did not establish that the proposed endeavor is of national importance as the Petitioner did not provide a detailed description of the proposed endeavor and why it is of national importance. On appeal, the Petitioner asserts that, "[a] review of the Proposed Endeavor set forth in the Initial Submission shows it is, in fact, highly detailed, with 12 separate bullet points, explaining the duties. . . ." The duties were submitted within the initial attorney letter, but its national importance was not further corroborated with independent and objective evidence. We note that unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not

[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 is discretionary in nature).

evidence and thus are not entitled to any evidentiary weight"). In the request for evidence (RFE), the Director requested a separate detailed description of the proposed endeavor and why it is of national importance. However, the record does not show that a separate detailed description or other similar evidence was submitted in response to the RFE. Instead, the Petitioner's response includes an attorney statement and additional expert opinion letters. As stated above, the submitted description of the proposed endeavor is not enough to constitute evidence and the Petitioner must support his assertions with relevant, probative, and credible evidence. *Matter of Chawathe,* 25 I&N Dec. at 375-76. Further, in determining national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. Even if we consider the duties, they do not sufficiently establish the specific endeavor. For example, the duties include "us[ing] expertise in the financial aspects of M&A deals in the oil and gas industry to identify and vet entities for the U.S. company to acquire or partner with." He later asserts that the Petitioner's "ultimate goal is to help further develop the U.S. oil & gas industry in order to enhance U.S. energy security, reduce costs of oil and gas for both commercial and consumer use; create thousands of jobs, and substantially increase U.S. GDP through providing the U.S. with secure access to reliable sources of oil and gas resources." While these are laudable goals, the record does not contain sufficient detail and evidence to substantiate his claims.

The Director concluded that the industry articles and reports provided useful background information but were of limited value to determining national importance. The Petitioner asserts that the industry articles and reports in the record are highly relevant to the national importance of the proposed endeavor. He states that the articles "confirm the value of. . .the Proposed Endeavor" in the areas mentioned above such as increasing U.S. GDP and job creation. As mentioned above, 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 specific endeavor that the foreign national proposes to undertake." *Id.* We recognize the value and importance of the industry; however, working in the industry is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of his proposed endeavor. Although the industry reports and articles provide information about the industry; without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

The record contains several letters written by professionals in the Petitioner's industry who attest to his credentials, education, and experience. For example, there is one letter that details a specific complex negotiation deal the Petitioner successfully completed. Another letter written by someone who has knowledge of the Petitioner's reputation in the field, states that the Petitioner is, "[a]mong the most prominent M&A professionals in the oil and gas and capital market sector in Russia" and is a, "leading figure in the Russian oil & gas market." A former colleague describes him as, "[w]idely recognized by various industry leading experts to be one of the best oil & gas M&A experts in his field." The Petitioner asserts that the letters documenting his experience and past success are proof of the national importance of his proposed endeavor as he is, "[l]ikley to succeed at the same or similar level in the U.S. based on his expertise in the field. . . ." However, evidence of the Petitioner's past success and experience is relevant to *Dhanasar's* prong two analysis, on whether the petitioner is well-positioned to advance the endeavor. It does not establish the national importance of the proposed endeavor as its focus is on the Petitioner's qualifications and not the endeavor's prospective impact.

Therefore, evidence of the Petitioner's past experience, even if successful, does not sufficiently establish the national importance of proposed endeavor.

Similarly, the Petitioner points to the Cybersecurity & Infrastructure Security Agency (CISA)'s statement, "[w]ithout a stable energy supply, heal [sic] and welfare are threatened and the U.S. economy cannot function." The Petitioner then says he, "[h]as a deep knowledge of energy resources and has the ability to vet those potential resources." This again goes to his credentials, education, and experience which are relevant to prong two analysis but not national importance as its reasoning focuses on the Petitioner's qualifications and not the endeavor's prospective impact.

The Director determined that the Petitioner had not established that his endeavor had, "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area" as set forth in *Dhanasar*. *Dhanasar* at 890. The Petitioner points to the letters in the record from colleagues and experts that state his proposed endeavor has the potential to lead to, "hundreds (or more) new U.S. jobs, and to vast positive economic benefits to our country." He states that these predictions are based on his experience. As stated above, past experience does not sufficiently demonstrate the prospective impact of the proposed endeavor. Additionally, the record lacks a plan with detailed proposed outcomes. It speaks of job creation in very general terms but lacks specificity. For example, there is no information about what types of jobs his specific proposed endeavor will create, where they will be created, how that will impact the economy, and if it will impact an economically depressed area. Although the record shows the industry tends to have an economic impact and create jobs when successful, the record lacks specific details on the Petitioner's proposed endeavor and how he intends to create jobs and impact the economy.

The Director found that the Petitioner's endeavor did not have implications beyond his employer and the Petitioner states that this is "unsupported, erroneous, and conclusory." As stated above, the record does not include a detailed proposed endeavor statement and does not establish its prospective impact. The statement does list some proposed duties such as, "[d]evelop and implement inorganic forth policies to underpin the overall strategy of my employer" or "[r]eview contract terms for various transactions to ensure compliance with applicable regional, national and international laws and treaties." The record shows the broad implications of the industry the Petitioner works within; however, it does not establish the broad implications of the specific proposed endeavor outside of his prospective employer. Similarly, 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. *Id.* at 893. Therefore, as the record does not establish the broader impact of the Petitioner's specific endeavor, we agree that the record does not establish the proposed endeavor will have broader implications beyond his prospective employer.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* 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

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence 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.