U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31653641

Date: JUNE 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a welder, seeks classification as an individual of exceptional ability in the sciences, arts or business. *See* 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 that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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. The Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability; however, the Director did not specify whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. The Director also concluded that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be 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 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established

eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *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).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director concluded that the Petitioner does not qualify for classification as an individual of exceptional ability; however, the Director did not specify whether, in the alternative, the Petitioner qualifies for classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act. The record does not clarify why the Director addressed whether the Petitioner may qualify for a national interest waiver if he was ineligible for second-preference classification, as the Director concluded.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* section 203(b)(2) of the Act; *see also INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

In a document that purports to be a business plan, the Petitioner described the endeavor as a plan "to work for a U.S. company in need of skilled welders like himself and to contribute to the company's growth with his exceptional welding abilities and knowledge." The document further states that the Petitioner "intends to transfer his welding expertise to other workers at that company who want to improve their welding skills." The document also describes the Petitioner's qualifications, and it provides generalized information regarding the welding industry and related topics. The document does not indicate that the Petitioner plans to found and operate his own business, as a business plan would indicate. Therefore, despite its title, the document that purports to be a business plan is a personal statement.

The Director acknowledged that the record "has established that the proposed endeavor is of substantial merit." The Director also acknowledged a letter of support written by the Petitioner's current supervisor, which informs how the Petitioner's work is important to his current employer. However, the Director observed that, other than a "personal business plan, no additional documentary evidence was provided in the [request for evidence] response in relation to any proposed services that

the [P]etitioner might provide that would impact the welding field more broadly." The Director discussed the personal statement that purports to be a business plan and the generalized information regarding the welding industry and related topics, noted above. The Director reiterated that the record does not establish how the "proposed endeavor has implications beyond his employer (or prospective employer), their business partners, alliances, and/or clients/customers and his prospective colleagues or workplace at a level sufficient to demonstrate the national importance of his endeavor." The Director further noted that the record does not establish how the proposed endeavor may have significant potential to employ U.S. workers, how it may have substantial positive economic effects, particularly in an economically depressed area, or other indicia of national importance, referencing the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Therefore, the Director concluded the record does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See id.* The Director further concluded that the record satisfies the second *Dhanasar* prong but that it does not satisfy the third *Dhanasar* prong. *See id.* at 888-91.

On appeal, the Petitioner reasserts that the personal statement that purports to be a business plan, noted above, establishes that the proposed endeavor has national importance. The Petitioner also summarizes generalized information regarding the welding industry and related topics.

We further note that, on appeal, the Petitioner submits an unsigned, undated, one-page letter that purports to be written by his child, "hidden from my father." Nevertheless, the Petitioner specifically swore upon filing the Form I-290B, Notice of Appeal or Motion, "I reviewed and understand all of the information contained in, and submitted with, my form," directly contradicting the letter's statement that it was submitted without the Petitioner's knowledge, which reduces the letter's credibility. Consequently, the doubt cast on the letter's credibility reduces the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition). Conversely, if the letter were truly "hidden from my father," as it asserts, the letter's inclusion in the appeal submission would make the Petitioner's sworn statement, "I reviewed and understand all of the information in, and submitted with, my form," untruthful. Deceptive statements can carry substantial penalties in an immigration benefit request context. *See, e.g.,* section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) (providing that fraud or willful misrepresentation of a material fact submitted in an attempt to procure a visa or other immigration benefits triggers inadmissibility). Regardless of which statement is true and which is untrue, the unsigned, undated letter that purports to be written by the Petitioner's child does not provide probative information material to the issue of whether the proposed endeavor may have national importance; therefore, we need not address it further.

In determining 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" and "we consider its potential prospective impact," looking for "broader implications." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The generalized information regarding the welding industry and related topics, which the Petitioner references on appeal, do not address the Petitioner, the specific endeavor that the Petitioner proposes to undertake, and how the endeavor may have the type of broader implications indicative of national importance. For example, the generalized information does not address how the specific endeavor the Petitioner proposes to undertake may have national or even global implications within the field of welding, or any other field, "such as those resulting from certain improved manufacturing processes or medical advances." *See id.* As another example, the generalized information does not address how the specific endeavor the Petitioner proposes to undertake may have substantial positive economic effects, such as "significant potential to employ U.S. workers." *See id.*

As noted above, the personal statement that purports to be a business plan specifically states that the Petitioner plans "to work for a U.S. company in need of skilled welders like himself and to contribute to the company's growth with his exceptional welding abilities and knowledge." The document further states that the Petitioner "intends to transfer his welding expertise to other workers at that company who want to improve their welding skills." The document establishes that the proposed endeavor may benefit the Petitioner's current and future employer(s), the clients and customers of the Petitioner's current and future employer(s), and whatever coworkers to whom the Petitioner may transfer his generalized "welding expertise." However, the record does not establish how the Petitioner's "work for a U.S. company in need of skilled welders" may have the type of broader implications indicative of national importance. For example, the record does not establish how the Petitioner's "work for a U.S. company in need of skilled welders" may have national or even global implications within the field of welding, or any other field, "such as those resulting from certain improved manufacturing processes or medical advances." *See id.* The record also does not establish how the Petitioner, as a single welder working for—presumably—one employer at a time, may have "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. *See id.* We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

III. CONCLUSION

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

ORDER: The appeal is dismissed.