U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30173028

Date: JUNE 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal consultant, 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 although the Petitioner qualified as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

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,[2] 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

[1] 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).

[2] *See also 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).

- On balance, waiving the job offer requirement would benefit the United States.

The Petitioner proposes to work as a legal consultant in the United States. The Petitioner states that his "expertise in social assistance, human rights, civil, public law, municipal secretariats, and counselor in municipalities, will generate a significant positive economic impact to U.S. Businesses and the National Interest" and "will contribute to the improvement of the several valuable sectors in the country, especially in the legal sector."

The first prong of the *Dhanasar* framework, 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner's proposed endeavor is of substantial merit, and we agree. Turning to the national importance of his endeavor, the Director concluded that the Petitioner did not establish that his proposed endeavor has national importance. Specifically, the Director acknowledged the Petitioner's evidence including the letters from counsel, his resume and personal statement, reference letters, and a letter from his law school. However, the Director concluded that the Petitioner did not submit sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor would rise to the level of national importance. That is, the record did not demonstrate that the Petitioner's proposed endeavor would stand to sufficiently extend beyond his future clients and employer(s) to impact the legal industry more broadly at a level commensurate with national importance.

The Director also noted that while the authors of the provided recommendation letters praised the Petitioner's personal and professional achievements and qualifications, they did not provide persuasive detail concerning the national importance of his proposed endeavor. In addition, the Director highlighted the Petitioner's statement regarding the worker shortage in the U.S. legal field. However, as the Director indicated, a national shortage of workers in the legal field is not, in and of itself, sufficient to establish the national importance of the Petitioner's endeavor. For instance, the Department of Labor directly addresses U.S. worker shortages through the labor certification process.

Moreover, the Director also concluded the Petitioner did not establish that his proposed endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. The Director reasoned that without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record did not sufficiently demonstrate benefits to the U.S. regional or national economy resulting from his legal consulting position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner contends that the Director erred in their conclusions and asserts that his response to the request for evidence (RFE) "clearly demonstrated that the proposed endeavor qualifies under the national importance prong and is sufficient to demonstrate that the Petitioner's proposed endeavor rises to the significant level of national importance to the U.S." The Petitioner also generally asserts that the evidence shows that his proposed endeavor would address critical issues and challenges

affecting the United States and its people, have broader implications in his field, and substantial economic benefits. In support, the Petitioner repeats verbatim his arguments regarding the national importance of his proposed endeavor from his RFE response without explaining why we should find these claims any more persuasive than the Director did. Further, he does not provide any additional evidence and does not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. This alone is grounds for dismissal. 8 C.F.R. § 103.3(a)(1)(v).

Therefore, we adopt and affirm the Director's decision as it relates to this prong. *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 this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.[3] The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] *See 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"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).