U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23093438

Date: MAR. 05, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an electrical engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner merits 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 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).

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.

II. ANALYSIS

The Petitioner is an electrical engineer who proposes to continue working in this field, working for a company providing services such as energy audits, alternative energy sources and consulting regarding energy efficiency in homes and businesses. In his decision, the Director determined that the Petitioner is eligible for the underlying EB-2 immigrant classification as a member of the professions holding an advanced degree. So the sole issue on appeal is whether the Petitioner merits a national interest waiver.

The first prong of the *Dhanasar* analytical framework, concerning the substantial merit and national importance of the proposed endeavor, 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 concluded that the Petitioner's proposed endeavor was of substantial merit, but that he did not establish that it would be of national importance, noting that the evidence did not show that it would have "implications beyond his prospective employer." On appeal, the Petitioner refers to the website of the United States Environmental Protection Agency (EPA) which includes statements about the value of energy efficiency, stating that this shows "that the use of energy efficiency is a matter that is the subject of governmental initiatives." While he acknowledges that simply working in such an industry is not sufficient to show the national importance of his proposed endeavor, the Petitioner states that his proposed endeavor would potentially impact his community and the environment, and is in an area that "is such a critical issue to the country."

The Petitioner correctly states that our decision in *Dhanasar* sought to avoid emphasizing the geographic breadth of an endeavor when determining its national importance. *Id.* at 890. However, petitioners proposing endeavors with a primarily local footprint must still demonstrate the broader implications of that endeavor. In this case, the Petitioner has not provided sufficient details regarding how his proposed endeavor of working as an electrical engineer with a U.S. company would potentially have broader implications. Contrary to his assertion, providing services in the area of energy efficiency, without more, is not sufficient to show national importance. In *Dhanasar*, we noted that broader implications might be demonstrated by improved manufacturing processes or medical advances, for example, or through evidence of a significant potential to employ U.S. workers or other substantial positive economic effects. But the Petitioner does not propose to introduce innovations in

[1] *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).

energy efficiency which could potentially affect the wider industry, nor does he claim that his endeavor would have economic effects that would be of national interest. And while he briefly mentions that his long-term goal would be to start his own company, he has not provided specifics regarding this business or asserted that it would potentially have substantial positive effects in terms of job creation or revenue, or would otherwise be of national importance.[2]

As for the potential environmental implications of his proposed endeavor, the Petitioner again refers to the EPA website. According to this evidence, the benefits of improved energy efficiency include lower greenhouse gas emissions and decreased water use. But we note that this evidence primarily focuses on the measures that can be taken by local governments to encourage energy efficiency in government, business, and residential settings, and thus does not directly support the implications of the Petitioner's proposed endeavor. In addition, as stated by the Director, the Petitioner has not shown how his provision of services such as energy audits and energy efficiency consulting would have implications beyond the individuals or organizations that would be his employer's customers, or how this work would impact the broader field of energy efficiency.

The remainder of the evidence consists of reference letters from the Petitioner's colleagues and employers discussing his previous work experience as an electrical engineer and maintenance manager, and reports concerning conditions in the overall energy efficiency industry. The Petitioner does not assert that these documents pertain to the national importance of his proposed endeavor. As he has not provided sufficient detail regarding his proposed endeavor, or provided supporting evidence demonstrating how it would potentially have broader economic, environmental, or other implications in the energy efficiency industry, we agree with the Director's conclusion that the Petitioner has not established its national importance. Therefore the Petitioner does not meet the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

A petitioner must meet all three prongs of the *Dhanasar* analytical framework in order to establish their eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the second and third prongs of the 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 an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.

[2] The Petitioner submitted a business plan for his own company, including economic and job creation projections, with a petition filed after this petition was denied. Because a petitioner must meet eligibility requirements at the time of filing the petition, we will not consider that business plan in our decision. 8 C.F.R. § 103.2(b)(1).