U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30108478

Date: MAR. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an engineer specializing in operations management, 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 Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Because this 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 remaining *Dhanasar* prong. *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 alternative issues on appeal where an applicant is otherwise ineligible).

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. 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.

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. at 889, 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 Director determined that the Petitioner was a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that he has more than 18 years of experience as an energy engineer with extensive experience in facility management for large corporations. His facilities management experience includes both industrial and healthcare properties. The Petitioner proposes to continue his career to "help U.S. facility management companies promote their efficiency and cost-effectiveness." He states that his proposed endeavor will "improve energy efficiency, promote energy stability, and improve quality control and efficiency while decreasing waste and the cost of running and managing facility operations."

With the initial filing the Petitioner submitted evidence of his education and experience, a personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver, a professional plan with evidence of financial support, an expert opinion letter, and recommendation and support letters. He also submitted industry reports and articles discussing the impact of the COVID-19 pandemic on various industries.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner's response to the RFE includes an updated personal statement, additional letters of recommendation, evidence of the Petitioner's employment offers, and industry reports on the field of facilities management.

In his updated personal statement, the Petitioner states that, in addition to continuing his career as an energy engineer in facility management, he intends to further his education. He states that he plans

[1] *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).

[2] The record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor's degree awarded in 2002, followed by more than five years of progressive experience. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

"to pursue a Master's Degree and a Ph.D. in Energy Management, focusing on renewable energy and sustainable systems, specifically solar and wind energy [to] help the United States reduce its energy imports and usage of fossil fuels, thereby reducing greenhouse gas emissions." He also states that he will attend training on new technologies.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had submitted sufficient evidence to demonstrate that his proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance, that he is well-positioned to advance his proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director determined that the record did not demonstrate that the Petitioner's proposed endeavor will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in his field of endeavor, going beyond his own business and clients. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Director made "erroneous conclusions of both law and fact." In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

A. Substantial Merit and National Importance

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and 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.

The Petitioner submits his personal statements and professional plan to support the national importance of his proposed endeavor. As noted, to establish national importance, the Petitioner must demonstrate the proposed endeavor's impact. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* at 889.

In his professional plan, the Petitioner describes the role and duties of an energy engineer. He also discusses the increasing need and demand for industrial, healthcare and data center real estate. The

Petitioner then describes his experience and professional accomplishments as an energy engineer working with each of these types of real estate. Although the Petitioner states that his experience in facilities and operations engineering and management will "support the economic development of the United States," he has not supported these assertions with sufficient independent, objective evidence. He does not describe or explain how his specific proposed endeavor - working for a U.S. employer as an energy engineer and facilities manager - will have a potential prospective impact. Nor does he describe the potential significant economic impact of his proposed endeavor. In discussing national importance, the USCIS Policy Manual addresses the example of a proposed endeavor for an engineer. "[W]hile engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer." 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. Here, although the Petitioner describes his field as energy engineering, he does not describe his specific projects and goals with sufficient detail to establish the national importance of his proposed endeavor.

The Petitioner concludes his professional plan by listing two employers who "would have a strong interest in [his] skills." However, the Petitioner does not submit evidence of offers of employment from either of these two employers. The record includes an employment offer and a request for interview with two Florida companies. The employment offer from [redacted] states the offered position as "Electric Engineer" but does not describe the proposed duties. Nor does the record include information about the company to demonstrate that it directly relates to the Petitioner's proposed endeavor to work as an energy engineer in facilities management of industrial, healthcare and data center real estate. The request for interview from [redacted] states that the open position is "Solar Energy Consultant" but does not describe the proposed duties or explain how the position relates to the Petitioner's specific proposed endeavor.[3] The Petitioner does not explain how his potential employment with either business will have broader implications beyond the company or its clients, such as substantial positive economic effects, broad enhancements to societal welfare, or contributions to the advancement of a valuable technology.

The Petitioner submits articles and industry reports describing the fields of facilities management and energy engineering. However, none of these reports addresses the Petitioner's specific proposed endeavor.[4] An excerpt from the Washington, D.C. Department of Energy and Environment website discusses the Green Building Act of 2006, which "requires that all non-residential District public buildings meet the U.S. Green Building Council's LEED certification standards for environmental protection at the 'Silver' level or higher." However, the Petitioner does not propose to work in Washington, D.C. and does not explain the relevance of this information to his specific proposed endeavor. An article dated July 2022, titled "Facility management – statistics & facts," describes the field and provides information on the size of the market and top companies. However, the Petitioner does not indicate that he will work with any of these companies mentioned or explain how this information relates to his specific proposed endeavor. Much of the Petitioner's evidence relates to the field generally, rather than his specific proposed endeavor. As noted above, the Director determined that the Petitioner's proposed endeavor has substantial merit, and we agree. However, the question

[3] A search of this company's website demonstrates that it is an installer of residential solar energy solutions. *See* https://www.[redacted].com/ (visited Mar. 7, 2024).

[4] While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

we are examining here is national importance. Even considering the articles and reports collectively and in the totality of circumstances, we still conclude that they do not support a finding that his specific proposed endeavor has national importance.

The Petitioner also references an expert opinion prepared by [redacted] of the [redacted] We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis [redacted] generally describes the role of an energy engineer and states that "[the Petitioner's] work is in demand and of national importance in the energy engineering sector." [redacted] also discusses an Executive Order "directing Federal agencies to manage their buildings, vehicles, and overall operations to optimize energy and environmental performance, reduce waste, and cut costs." However, in describing his proposed endeavor, the Petitioner does not indicate that he will work on federal buildings or for federal agencies. [redacted] does not discuss the details of the Petitioner's specific proposed endeavor. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*

Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the Petitioner's specific proposed endeavor and why it would have national importance. [redacted] does not elaborate on how the Petitioner's specific proposed endeavor will have a prospective impact on the United States, including the national or global implications on energy engineering, the potential to employ U.S. workers, or the positive economic effects. His opinion is general in nature, concluding that energy engineers provide services of national importance. "In determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (emphasis added). Dr. Foreman does not provide a substantive analysis of the Petitioner's specific proposed endeavor or suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States.

On appeal, the Petitioner relies upon the evidence he previously submitted and asserts that the Director made erroneous conclusions of law and fact. The Petitioner does not identify the Director's erroneous applications of law. Although we acknowledge that the Director erroneously references the Petitioner's proposed endeavor as "consulting work" rather than direct employment with a U.S. company, the Petitioner does not explain how this error is material or resulted in an erroneous application of law. The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the trends in energy engineering. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful

purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining *Dhanasar* prong.[5] *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.

ORDER: The appeal is dismissed.

[5] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that he is well-positioned to advance his proposed endeavor, or 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the first and third *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.