U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30212758

Date: MAR. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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 he merits a waiver of the required job offer, and thus of the labor certification, 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 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Immigration Services (USCIS) may, as a 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
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

A. EB-2 Classification

We agree with the Director's determination that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree.[3] As such, the only remaining issue is whether the Petitioner's endeavor meets the *Dhanasar* framework for a discretionary national interest waiver.

B. Substantial Merit and National Importance

The first *Dhanasar* 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. *Id.* at 889. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while 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. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

Dhanasar's first prong focuses on the specific endeavor that the foreign national proposes to undertake and its "potential prospective impact." *Id.* at 889. As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

The Petitioner's proposed endeavor is to manage a Florida based company, [redacted] which has the dual purpose of improving affordable housing availability for middle- and working-class individuals in the United States and encouraging foreign investment in the housing sector. His company will accomplish its purpose by developing housing projects, including luxury, multifamily,

[2] *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).

[3] The Petitioner submitted his diploma and transcripts from his master of business administration degree, which he completed at [redacted] in Massachusetts in 2020.

and affordable housing construction, using funds from Latin American investors. As such, we agree with the Director's conclusion that the proposed endeavor has substantial merit.

Because the endeavor has substantial merit, we turn to whether the proposed endeavor is of national importance, as contemplated by *Dhanasar*. The Director summarized the evidence and analyzed why the Petitioner did not establish his endeavor is of national importance. The Director noted that the Petitioner did not establish the economic impact or the number of jobs created by his project to build a 14-unit multifamily building in [redacted] Florida.[4] The Director found that although the Petitioner submitted a letter from an employee of [redacted], explaining that the Petitioner's company hired [redacted] as a general contractor, the letter lacked details regarding the number of jobs and the economic impact of the project in an economically depressed area. The Director also noted that the Petitioner did not sufficiently corroborate his claim of funding more than ten different real estate projects or that he intends to raise and grant mortgages to develop more than 20 new apartments in Florida.[5] The Director agreed that affordable housing is an issue of national importance, but that this alone was insufficient to meet the Petitioner's burden, which requires proof, by a preponderance of the evidence, that the endeavor's impact goes beyond "his company, its investors, and clientele" to affect the real estate industry, writ large, or have the "significant potential to employ U.S. workers, or have substantial positive economic effects, particularly in an economically depressed area, at a level commensurate with national importance."

Upon de novo review, we adopt and affirm the Director's decision regarding the Petitioner's eligibility under the first *Dhanasar* 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 the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner asserts the Director abused their discretion by misapplying and misunderstanding the law and by finding the evidence insufficient to establish the Petitioner's burden by a preponderance of the evidence. Further, he asserts that a "careful reading" of his initial petition, and the personal statement submitted in response to the Director's request for evidence, corroborate and establish the economic and social impacts of his endeavor. The Petitioner also asserts that *Dhanasar's* "substantial positive economic effects, particularly in an economically depressed area" standard is ill-defined and does not require that a specific number of workers be hired, but that the endeavor has the "potential to hire U.S. workers," which the Petitioner supported through objective evidence. Lastly, he claims the Director imposed a "novel or otherwise undefined and arbitrary

[4] For brevity, we will not repeat verbatim the Petitioner's two personal statements describing his proposed endeavor, however it has been incorporated into our understanding of what his proposed endeavor is and the impacts he claims will stem from it.

[5] Specifically, the Director noted "[h]owever, these [four] letters are not supported by other objective documentary evidence which shows that the loans were accepted by the applicants, and the type of real estate project it funded. Similarly, the petitioner did not provide any information or other documentary evidence that demonstrates the number of new jobs these projects would create, or the significant positive economic impact these projects would bring, in particular to an economically depressed area."

requirement that is not present in the controlling precedent or relevant regulations in order to serve as a bar for approval of a petition."

We agree with the Petitioner's assertion that imposing a novel or undefined or arbitrary standard or requirement would be contrary to law and precedents. However, we disagree with the contention that the Director's decision did so. Instead, the Director correctly noted the standard and described the deficiency in the evidence to corroborate the Petitioner's claims. For instance, the Director did not require the Petitioner to employ a specific number of U.S. workers to meet the "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area" standards set forth in *Dhanasar*. *Dhanasar* at 890. As stated above, the Director found the corroborating evidence insufficient because it was not specific and did not provide the level of detail needed to determine if his proposed endeavor would have the positive economic effects he claims. The Director also noted that some of the corroborating documentation was not translated. On appeal, the Petitioner does not address these evidentiary deficiencies. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner contends that his personal statement should be sufficient to meet his burden, without further corroboration, of establishing the substantial positive economic effects that will come from his proposed endeavor. He asserts that his statement contains all relevant details needed to determine the economic impacts of his endeavor, without further corroboration. However, a petitioner's general assertions, without more, are insufficient to establish the standard set forth in *Dhanasar* by a preponderance of the evidence. *Id.*

Similarly, the Petitioner asserts the Director abused their discretion by requiring that the endeavor's "impact must extend beyond his clientele" because, he argues, this requirement lacks a legal basis and contradicts *Dhanasar's* framework by imposing a "geographical scale." We disagree. In *Dhanasar*, we determined that while proposed classroom teaching activities in STEM may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *Id.* at 893. Similarly, here, the Director concluded that although the Petitioner's endeavor has substantial merit, because he did not establish that his endeavor would benefit others apart from his clientele, even against the backdrop of a documented national shortage of affordable housing, there is insufficient evidence to establish that the endeavor will impact the field of real estate development or solve the affordable housing problem.

Lastly, the Petitioner asserts the Director erred by failing to consider the totality of the evidence and specifically cites to the documentation provided to establish the U.S. government's interest in the Petitioner's endeavor because it aims to build affordable housing. We acknowledge the articles and reports submitted by the Petitioner, which discuss: the need for programs that expand access to capital; the dire need for low-income housing for families; the fact that Florida, like many other states, has an affordable housing problem; the documented fact that addressing housing insecurity will boost the economy; that 49% of Americans say the availability of affordable housing in their community is a major problem; and the existence of government programs through Housing and Urban Development aimed at addressing the issue of affordable housing as well as SelectUSA, which encourages domestic and foreign investment in the United States to boost the economy. While we acknowledge and consider that foreign investment and affordable housing are two important issues affecting our nation's

economy, the totality of the Petitioner's evidence in this regard speaks to the substantial merit of his proposed endeavor but does not establish that his endeavor would have the economic impact he asserts. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Id.* As such, he has not established that "[his] endeavor [] has [the] significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area . . . [such that his endeavor is of] national importance." *Dhanasar*, 26 I&N Dec. at 890.

The Petitioner has not established his proposed endeavor stands to sufficiently extend beyond his clientele to impact his field more broadly at a level commensurate with national importance. Further, he has not established how his endeavor offers original innovations that will contribute to advancements in his field. Additionally, without evidence regarding any projected U.S. economic impact or job creation *directly* attributable to his future work, the Petitioner has not established that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

B. *Dhanasar's* Second and Third Prongs

As the Petitioner has not established the national importance of his proposed endeavor, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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).

As stated, we adopt and affirm the Director's decision regarding the Petitioner's eligibility under the first *Dhanasar* prong.

ORDER: The appeal is dismissed.