U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29828150

Date: MAR. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks classification as a member of the professions holding an advanced degree. *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, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he 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. 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a professional plan and statement submitted with the petition, the Petitioner stated that he intends to continue his activities as a civil engineer, specifically focusing on infrastructure and civil construction in public, commercial, and residential buildings. He further stated:

> In the United States, I will create, develop, and implement innovative construction solutions to attend U.S. companies' needs, using the most up-to-date technology in the field. I will provide training on themes related to solutions, as well as other subjects of great relevance within the civil engineering area. I will train other U.S. professionals, thereby helping the nation enhance its Civil Engineers' workforce. Consequently, I will build a network of qualified personnel to lead Civil Engineer departments and create solutions in order to advance innovations to better serve the field.
>
> In addition to offering my services to private companies, I will also work for public institutions in construction and infrastructure, providing the population with social well-being, convenience and security, working, for example, in projects for hospitals and health units, schools, sports centers, parks, paving roads, highways, streets and avenues, bridges, viaducts, among others.

The Petitioner also provided a list of the specific duties he intended to perform in the United States as a civil engineer. In addition to his professional plan and statement, the Petitioner submitted copies of his academic credentials, an expert opinion letter, letters of recommendation, and records of his achievements.

The Director determined that the Petitioner's initial filing did not establish that the proposed endeavor had substantial merit or national importance. The Director observed that the Petitioner did not provide specific insight as to what he intends to do in the United States, or that his proposed endeavor would have potential prospect impact, significant potential to employ U.S. workers, or other substantial positive economic effects. As a result, the Director requested a detailed description of the Petitioner's

proposed endeavor in order to evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner resubmitted his professional plan and statement, and also submitted a letter from his counsel, an updated resume, and an additional testimonial letter in support of his eligibility for a waiver of the job offer. Counsel's letter lists many goals for the Petitioner's endeavor, such as managing and developing both small- and large-scale development projects, preparing inspection reports, and undertaking technical and feasibility studies. Rather than establishing that the Petitioner's specific proposed endeavor has national importance, we note that most of these objectives simply describe the typical occupational duties of a civil engineer.[2]

In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that his proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that the Director disregarded the evidence submitted, and provides a brief emphasizing his qualifications as a civil engineer and asserting that the evidence of record establishes the national importance of the proposed endeavor.

In determining national importance, 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." *See Dhanasar*, 26 I&N Dec. at 889. 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.

We agree with the Director that the Petitioner has not provided sufficient documentation explaining how the proposed endeavor is of national importance. We recognize the importance of the civil engineering and construction industries; however, merely working in the civil engineering and construction fields is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. While we acknowledge the Petitioner's intent to provide engineering services to private companies and public institutions, the purpose of the national interest waiver is not to afford the Petitioner an opportunity to engage in a job search or further his own career while only adding ancillary benefits to

[2] In determining national importance, the analysis focuses on what the petitioner will be doing rather than the specific occupational classification. For instance, although the petitioner in *Dhanasar* was an engineer by occupation, the decision discusses his specific proposed endeavor "to engage in research and development relating to air and space propulsion systems, as well as to teach aerospace engineering." *See generally* 6 *USCIS Policy Manual* F.5(D)(1), http://www.uscis.gov/policy-manual; *see also Matter of Dhanasar*, 26 I&N Dec. at 891.

the nation. The record as constituted contains insufficient evidence demonstrating any projected economic or environmental impacts specifically attributable to the Petitioner's proposed endeavor.

The Petitioner cites to articles and reports discussing a wide variety of topics including industry trends in the construction industry and the shortage of civil engineers.[3] On appeal, the Petitioner's counsel also cites to these articles and reports, emphasizing the Petitioner's experience in the field and generally asserting that his proposed endeavor will help the national economy by providing crucial civil engineering services based on the observations noted in these publications.[4] The Petitioner, however, must demonstrate the national importance of his specific, proposed endeavor of providing his particular civil engineering services to private and public entities rather than the importance of civil engineering and related fields and industries. While we note that the findings in the publications support the Director's determination that the proposed endeavor has substantial merit, it does not establish that the endeavor has national importance. We recognize the value of civil engineering services; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

Moreover, we note the Petitioner's assertion that there is a shortage of civil engineers in the United States. We are not persuaded by the claim that his proposed endeavor has national importance due to the shortage of professionals in his industry, as there is no indication that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Throughout the record and again on appeal, the Petitioner points to his background, education, and experience in his field.[5] The Petitioner also provided several letters of support that discuss his civil engineering capabilities and experience. The Petitioner's knowledge, skills, and experience in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

The Petitioner claims that his proposed endeavor has national importance because civil engineering will contribute to U.S. economic growth and development by creating investment opportunities in the construction industry, creating jobs, generating income, and developing housing and infrastructure. Further, the Petitioner notes the importance of STEM occupations, and the impact of foreign-born STEM professionals.[6] Again, in determining national importance, the relevant question is not the

[3] While the Petitioner and his counsel cite to numerous articles and reports throughout the record, the actual articles and reports were not submitted in support of the petition.

[4] The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2 (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

[5] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

[6] It is important to note that being employed in a STEM field does not automatically show eligibility for a national interest waiver. Specifically, the STEM endeavor must have both substantial merit and national importance in respect to the first prong of *Dhanasar*. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual. Here, the Petitioner has shown the former, but not the latter.

importance of the 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.* at 889. Here, the Petitioner has not established how his individual employment as a civil engineer would affect the U.S. economy more broadly consistent with national importance.

The record contains an expert opinion letter from an adjunct professor at the [redacted] who concludes that the Petitioner's proposed work has national importance. But the professor does not base his conclusion on the national importance of the Petitioner's specific endeavor. Although he recites the Petitioner's career history and accomplishments, and praises his success as a civil engineer in Brazil, his findings stem from the significance of civil engineering and construction, and the importance of the construction industry on the U.S. economy and the need for affordable housing. It describes how the construction industry supports national initiatives and that the Petitioner's experience makes him capable to provide construction and civil engineering services to the construction industry. Instead of focusing on the Petitioner's specific proposed endeavor having a prospective impact in the field of construction, the opinion focuses on the importance of the construction industry and how the Petitioner's experience as a civil engineer would be beneficial to the United States. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable"). The letter does not contain sufficient information and explanation of the Petitioner's proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work in civil engineering offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

While the Petitioner's statements reflect his intention to provide valuable civil engineering services for his clients or employers, he has not offered sufficient information and evidence to identify the proposed endeavor with specificity or otherwise demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *See Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his employers or clientele to impact the civil engineering field or the U.S. economy more broadly at a level commensurate with national importance, as his statements are not sufficient to demonstrate his endeavor has the potential to provide his claimed economic and environmental benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's civil engineering services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890. The Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of

national importance. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of 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.