U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37177450

Date: MAR. 25, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial production manager, 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 established he met the criteria of exceptional ability, the record did not establish 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 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.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Our precedent decision in 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.

Id.

As an initial matter, we agree that the Petitioner has met the eligibility criteria for exceptional ability.

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

The Director found that the evidence initially submitted with the petition did not sufficiently show the Petitioner's future work as an industrial production manager would have national or global implications, would impact a matter that a government entity described as having national importance or is the subject of national initiatives, or would have other substantial positive economic effects as claimed. Therefore, the Director issued a request for evidence (RFE). In response to the RFE, the Petitioner impermissibly made a material change to his proposed endeavor and asserted that the materially changed proposed endeavor met the requirement of national importance.

We adopt and affirm the Director's finding that the Petitioner made an impermissible material change in his proposed endeavor. 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).

The Director denied the petition finding, in part, that the Petitioner materially changed his proposed endeavor. While the Petitioner first proposed to work as an industrial production manager in his initial filing, in response to the Director's request for evidence (RFE), the Petitioner submitted a new statement and business plan claiming he now intended to operate a company, [redacted] to become an entrepreneur, acting as the CEO, developing business leads, and working with entities to provide efficient maintenance services, contributing to the safe effective operation of wind farms.

The Director found this new information constituted an impermissible material change of the Petitioner's proposed endeavor. In other words, the Director essentially determined that since the gulf between the endeavor proposed at the time of filing and the one described in the RFE response was so wide, the record contained two separate and independent proposed endeavors.

Upon de novo review, we can conduct a Dhanasar analysis on only one endeavor per petition, i.e. the proposed endeavor at the time of the initial filing. On appeal, the Petitioner has elected not to contest whether he made a material change in his proposed endeavor and, instead, bases his arguments on his new endeavor, which we will not analyze. In doing so, the Petitioner fails to meaningfully argue how the Director erred in analyzing the initial endeavor and its evidence and, therefore, has not overcome it.

Because the Petitioner must establish eligibility at the time of filing, his claims of national importance relating to operating [redacted] a material change from the initially filed petition, cannot be considered. 8 C.F.R. § 103.2(b)(12); Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971). Upon de novo review, we find that the Petitioner has not sufficiently shown that his initial endeavor of working as an industrial production manager is nationally important.

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining appellate arguments. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.