U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30644125

Date: MAY 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is an entrepreneur intending to operate in the commercial flooring industry who 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 (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record established that the Petitioner qualified for the underlying visa classification, but he did not merit a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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.

First, we do not agree with the Director that the Petitioner presented evidence establishing he qualifies as an advanced degree professional under the regulation at 8 C.F.R. § 204.5(k)(2). In particular, the Petitioner's evidence demonstrating he attained at least five years of progressive work experience in the specialty are deficient. Each of the letters were authored by the same individual, included his job title, and the years he worked at each entity. The deficiencies consist of: (1) each letter lacks a specific description of the duties he performed; (2) the letters' author was the accountant for each organization and not his former employer or trainer; and (3) the letters do not include the author's address. The regulation at 8 C.F.R. § 204.5(g) mandates the inclusion of these elements. We therefore withdraw the Director's favorable finding as it relates to this requirement.

After reviewing the entire record, we adopt and affirm the Director's ultimate determination relating to the Petitioner's NIW eligibility with the added comments below. *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 the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Edwards v. U.S. Att'y Gen.*, 97 F.4th 725, 734 (11th Cir. 2024) (joining

every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

In the end, the Petitioner proposes to start a commercial flooring business where he will employ U.S. workers. But the record does not suggest that the Petitioner's business management abilities or methodologies somehow differ from, or improve upon, those already available and in use in the United States. The Petitioner does not sufficiently describe the global or national implications of his "strategic and advanced approaches to remain competitive" or the broader implications of his introduction of "diversity and quality to the products offered by [his] company." The *Dhanasar* decision contemplates that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Matter of Dhanasar*, 26 I&N Dec. 884, 893 (AAO 2016). The Petitioner has not preponderantly established the extent to which the proposed endeavor will benefit the United States or how it will impact the field more broadly, which the *Dhanasar* precedent requires.

The Petitioner contests the Director's determination that the benefits of the proposed endeavor would not travel far beyond the Petitioner's company, its employees, or its clients. Although the appeal attempts to refute this determination, the Petitioner's reliance on operational efficiency, quality control, cost management, and the transfer of his knowledge fall far short of showing the endeavor is of national importance. The types of impact of his entrepreneurialism and the resulting benefits to the economy are incremental and are not impactful at the level warranting a waiver of the job offer requirement. Lacking from the record is an indication of the extent to which the Petitioner's endeavor would make his claimed contributions, and as such, a showing that his endeavor would have substantial positive economic effects rather than incremental or nominal impacts. Nominal growth of an industry is not sufficient to meet the national importance requirement under the *Dhanasar* framework. *Id.* at 889–90.

Based on the support letters and the Petitioner's business experience, it appears that he could be a successful business owner in the United States, but that is not what the *Dhanasar* decision requires to warrant a waiver of the job offer requirement under its first prong. A petitioner must demonstrate the proposed endeavor will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" (*Id.* at 889). Such endeavors may have "national or even global implications within a particular field" (*Id.* at 889), "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area, for instance" (*Id.* at 890), or the potential to advance and affect U.S. strategic interests (*Id.* at 892). Ultimately, when we evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence illustrating the "potential prospective impact" of his actual proposed work. *Id.* at 889.

In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.