U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31108845

Date: MAY 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical engineer/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 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 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 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 prongs.[1]

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 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

[1] 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).

and Immigration Services (USCIS) may, as 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.

II. ANALYSIS

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

The Petitioner, a mechanical engineer/entrepreneur, states that he has more than 10 years of experience in "industrial maintenance with significant presence in the beverage and automotive industries."[3] His proposed endeavor is to expand his craft beer company "which is to specialize as a microbrewery" producing 5,000 liters per month in [redacted] New Jersey. Additionally, the Petitioner states that his "overall proposed endeavor…is to offer [his] expertise to expand [his] business operations in the United States" and "continue contributing to building wealth within the economy with [his] investments."

With the initial filing, the Petitioner submitted evidence of his education and experience, "a professional plan & statement" describing his proposed endeavor and claimed eligibility for a national interest waiver, a letter from counsel, a business plan, recommendation/employment letters, an expert opinion letter, and industry reports and articles.

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 a national interest waiver. The Petitioner's response included a letter from counsel, resubmission of evidence, evidence of his education and employment, articles, and letters of recommendation.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had not met any of the three prongs of the Dhanasar analytical framework. Concerning the Petitioner's eligibility under *Dhanasar's* first prong, the Director determined that the evidence did not establish that the Petitioner's proposed endeavor had substantial merit or national importance.[4] The Director further determined that the Petitioner had not demonstrated his eligibility for a national waiver under the second or third prongs of the Dhanasar analytical framework.

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[2] 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).

[3] We note that the Petitioner, in his professional plan and statement, states both that he has more than 10 years of experience in industrial maintenance and that he has more than "8 years of experience as a Mechanical Engineer in construction, automotive, and beverage industries." The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

[4] Because we resolve this appeal on the national importance component of *Dhanasar's* first prong, we do not address the Petitioner's eligibility under the other prongs.

On appeal, the Petitioner submits a brief and asserts that the Director "did not apply the proper standard of proof…instead imposing a stricter standard." Further, the Petitioner contends that the Director "erroneously applied the law." Lastly, the Petitioner argues that the Director did not give "due regard to various pieces of evidence including his resume, business plan, "[e]vidence of the [Petitioner's] work in the field," recommendation letters, and industry reports and articles.

Regarding the Petitioner's contention that the Director failed to apply the proper standard of proof, we disagree. Although the evidentiary standard in immigration proceedings is the preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. Matter of Y-B-, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); also see the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). The Director correctly states that the Petitioner must demonstrate that he is eligible for a national interest waiver by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76. Moreover, the Petitioner does not analyze how the Director failed to properly consider the evidence in the record. For instance, the Director specifically mentions the Petitioner's statement, recommendation letters, evidence of the Petitioner's work in the field, and articles in her decision.[5]

As to the national importance component of *Dhanasar's* first prong, we consider the proposed endeavor's potential prospective impact in determining whether it has national importance. 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." See 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 contends that his proposed endeavor, opening a microbrewery in New Jersey, "will seek to promote and protect small and independent brewers in the United States." Further, the Petitioner states he will "focus on designing and optimizing brewing equipment, analyzing, and [sic] optimizing brewing equipment, and promoting environmental sustainability within the microbrewery industry."

The Petitioner has not introduced evidence that demonstrates that his proposed endeavor would have substantial positive economic effects. In his appeal brief, the Petitioner states, through counsel, that a "key aspect of this endeavor is the development and implementation of environmentally sustainable practices within the microbrewery industry." As such, the Petitioner will "explore the integration of renewable energy sources, such as solar or wind power, into brewing operations." In addition, the

[5] The Director stated "USCIS examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of evidence, to determine whether the fact to be proven is probably true."

Petitioner will "promote recycling initiatives and waste management strategies to minimize environmental impact and promote sustainability." However, these arguments were absent from the materials filed before the RFE was issued. In fact, we only locate assertions made about environmental sustainability and renewable energy in counsel's RFE response letter. Further, in a letter from the Petitioner's employer, a utility and heavy construction firm, we find no mention of his proposed endeavor or of any planned efforts for it to be environmentally sustainable or renewable energy friendly.

The Petitioner argues on appeal that "he relied on [a] US government database from [the] Small Business Administration – SBA HUBZone" to determine the location of his company.[6] He states that his decision "arose from the desire to take a stand and create a positive impact, generating jobs for US workers in underutilized areas in the state [sic] of [redacted] The Petitioner contends that his company will also "improv[e] the wages and working conditions for US workers, help[] the local community to attract investments in the region, and thus encourage[e] economic development." However, the Petitioner's "Professional Plan & Statement" does not mention the SBA's HUBZone program, nor does his business plan. Further, the Petitioner does not state, and the evidence in the record does not indicate, that his business will be a participant in the HUBZone program. The record does not contain other evidence that demonstrates his proposed endeavor will benefit underserved communities. Thus, we are unable to conclude that his endeavor will have substantial positive effects, particularly in an economically depressed area, to reach the level of national importance.

Likewise, the industry reports and articles submitted by the Petitioner do not show how his proposed endeavor is of national importance.[7] The articles are general in nature and do not involve the Petitioner or his proposed endeavor. An article from the Center for Immigration Studies, submitted by the Petitioner, questions whether continued immigration to the United States is maintainable considering the "record numbers" of immigrants. An industry report titled "Mechanical Engineering Careers," by Imed Bouchrika, states that "[m]echanical engineering is critical to the design, manufacture, and operation of small and large mechanical systems that propel economies." However, the report does not mention the Petitioner or his proposed endeavor or that there is substantial demand for the development of microbreweries. In another report by IBISWorld, "Engineering Services in the US," we learn that engineering services "revenue is expected to grow an annualized 2.0% to $360.9 billion "over the five years to 2027." While those projections may be accurate, the report does not demonstrate how the Petitioner's endeavor will be part of that growth.

Professor [redacted] of [redacted] authored a letter in support of the Petitioner's case. We acknowledge that the expert opinion letter includes a purported analysis of the national importance of the Petitioner's proposed endeavor. Professor [redacted] asserts that "as a seasoned Mechanical Engineer who possesses an intimate knowledge of the Mechanical Engineering industry in Brazil, there is no doubt that his [sic] would work in the United States in an area of substantial merit and national importance."[8] Further, Professor [redacted] provides information about

[6] According to the Small Business Administration's website, "[t]he HUBZone program fuels small business growth in historically underutilized business zones with a goal of awarding at least 3% of federal contract dollars to HUBZone-certified companies each year."

[7] While we discuss a sampling of the evidence in the record, we have reviewed and considered the totality of evidence.

[8] We note that much of Professor [redacted] letter under the first prong heading, in fact, goes to the Petitioner's eligibility under *Dhanasar's* second prong.

general topics such as the growth in job opportunities for mechanical engineers in the United States and the growth of opportunities for construction managers. What is missing is any analysis of the Petitioner's specific proposed endeavor as the opinion letter remains silent on the Petitioner's plan to open a microbrewery as regards national importance. Professor [redacted] does not explain how the Petitioner's proposed endeavor will help U.S. businesses prosper, how or if the endeavor has a significant potential to employ U.S. workers, or how the endeavor has other substantial positive economic effects.

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, Professor [redacted] letter is of marginal probative value as it does not meaningfully address the Petitioner's proposed endeavor as it concerns national importance. Professor [redacted] does not discuss the Petitioner's plan to open a microbrewery in New Jersey. Instead, the opinion letter concludes that U.S. companies would "benefit from the expertise of an Engineer such as [the Petitioner] with an intimate knowledge of the Construction sector." His opinion letter is general in nature and seems unconnected to the Petitioner's actual endeavor. "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. As Professor [redacted] does not provide a substantive analysis of the Petitioner's proposed endeavor, we are unable to give the letter much weight.

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 second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining Dhanasar prongs. 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.