U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30518664

Date: MAY 13, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is an entrepreneur, he will occupy the position of a general operations manager, and he 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that he merits 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.

I. LAW

To establish eligibility for an NIW, 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.

Once a petitioner demonstrates eligibility for the EB-2 classification, they 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. 884, 889 (AAO 2016), provides the framework for adjudicating NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

II. ANALYSIS

As an initial matter, we note that the Petitioner asserts on appeal through counsel that in denying the petition, the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, the Petitioner does not offer a detailed analysis explaining the particular ways in which the Director "imposed novel substantive and evidentiary requirements" in denying the petition, supported by pertinent law or regulation.

Also, the Petitioner generally alleges the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to the detriment of the [Petitioner]." The standard of proof governing the immigration benefit requests is the "preponderance of evidence." *Chawathe*, 25 I& N Dec. at 375–76. To determine whether a petitioner has met his burden under the preponderance standard, we evaluate whether a petitioner's claims are "more likely than not" or "probably" true, but also consider the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79–80 (Comm'r 1989).

Here, the Petitioner does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition. Without documentary evidence to support the claims, counsel's assertions in a brief do not constitute evidence, nor will they satisfy the Petitioner's burden of proof. *Matter of Arambula-Bravo*, 28 I&N Dec. 388, 396 (BIA 2021); *Matter of J.J. Rodriguez*, 27 I&N Dec. 762, 765–66 (BIA 2020); *see also Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

We therefore dispose of these overarching claims and now move to address the merits of the NIW claims.

III. NATIONAL INTEREST WAIVER

The Petitioner's proposed endeavor is to continue his entrepreneurial venture acting as the company's director. The organization is a real estate management company acting as an intermediary between property owners and those seeking to rent or purchase properties. The Petitioner indicated when he filed the petition that the organization held a portfolio of 50 properties with a goal to increase that number to 200 properties within 5 years.

A. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

The first 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined the Petitioner failed to sufficiently support his claims regarding the positive cumulative effects on real estate work in the United States, and in turn the record did not reflect his activities would impact the field of real estate on a broader level. Discussing the Petitioner's business plan, the Director acknowledged the number of Florida properties his company had accumulated but decided that did not indicate the proposed endeavor would have national or global implications within the industry, nor that it would result in substantial positive economic effects.

Responding to the portion of the Director's denial relating to *Dhanasar's* prong one requirements, the Petitioner's appeal brief, while ostensibly lengthy, nevertheless does not effectively contest the reasons for that determination. A summary dismissal of an appeal is appropriate when the filing party only asserts the underlying trier of fact came to the wrong conclusion or expresses general disagreement with the lower decision and "fails to specify the reasons for the appeal." *Matter of Valencia*, 19 I&N Dec. 354, 355–56 (BIA 1986); *Matter of Davis*, 20 I&N Dec. 536, 537–38 (BIA 1992); *Matter of Keyte*, 20 I&N Dec. 158, 159 (BIA 1990); *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988); *Matter of Lodge*, 19 I&N Dec. 500, 501 (BIA 1987); *Matter of Holguin*, 13 I&N Dec. 423, 425 (BIA 1969). Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Valencia*, 19 I&N Dec. at 355. This Petitioner's appeal brief is the type that is situated within the realm of those warranting a summary dismissal. The Petitioner cannot overcome the Director's conclusions made under *Dhanasar's* first prong without specifically contesting them.

Nevertheless, we will address some of the elements pertaining to *Dhanasar's* first prong within the appeal brief. In the brief, the Petitioner indicated that in addition to helping the business industry in the United States, he can help U.S. businesses develop cross-border projects by facilitating business operations of U.S. entities seeking to invest and develop business relations, particularly in Latin America. First, the Petitioner does not tie in any cross-border projects with his proposed endeavor, nor does he sufficiently describe the global or national implications of such projects in the real estate brokerage or property management industries. Second, the Petitioner does not detail the types of cross-border projects he would engage in, so it's not clear that these would relate to real estate in any manner. Stated differently, this appellate claim bears no effect on the Petitioner's eligibility.

Also, we conclude the Petitioner offered conflicting statements regarding the proposed endeavor's focus. The Petitioner's appeal brief reflects he "has gained extensive experience, skills, and contacts in the field of Business and Operations Management and knowledge that will allow me to help the food services sector in the United States." But the food services sector is unrelated to his stated proposed endeavor of real estate brokerage or property management. As a result, even if the Petitioner had substantively contested the Director's adverse findings under the first prong, it would be necessary for him to resolve this inconsistent information in the record. Such an amelioration must be demonstrated through the submission of relevant, independent, and objective evidence that illustrates which facts are true. *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988).

For the remainder of the appeal brief's first prong arguments, the Petitioner places little to no focus on the actual proposed endeavor, which is the issue at hand under *Dhanasar's* first prong. Instead, he discusses his skills and abilities as a general and operations manager, or he refers to industry reports and their importance within the relevant industry instead of to the proposed endeavor. When

determining national importance, the relevant question is not the importance of the overall field, industry, or profession in which the individual will work; instead, USCIS must focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889.

In summary, we conclude that the Petitioner has not satisfied the *Dhanasar* precedent decision's first prong, and he has not demonstrated eligibility for an NIW.

B. *Dhanasar's* Second and Third Prongs

As we explain above, *Dhanasar's* second and third prongs require the Petitioner to demonstrate he is eligible for an NIW meeting additional requirements. But because the Petitioner has not established that his proposed endeavor satisfies the *Dhanasar* framework's first prong, he is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.