U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31108926

Date: MAY 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *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 the Petitioner did not demonstrate that: 1) he qualified for the EB-2 classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability; or 2) he merited a national interest waiver, as a matter of discretion, under the three-prong framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id.* 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 national interest waiver

petitions. *Dhanasar* states that 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. EB-2 Classification

In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. In denying the petition, the Director concluded that the did not qualify for the EB-2 classification as an advanced degree professional or as an individual of exceptional ability.

On appeal, in addition to providing previously submitted evidence, the Petitioner submits new employment verification letters and a recent letter from a school he attended. As a preliminary matter, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). As discussed below, the Petitioner has not presented adequate reasons or evidence on appeal to overcome the Director's determination that he is ineligible for a national interest waiver, as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of his EB-2 eligibility. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

B. National Interest Waiver

With regard to the Petitioner's proposed endeavor, he initially indicated that he intended to operate a water rescue training facility specializing in instructing members of law enforcement.

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

[1] *See 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).

whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director concluded in the denial notice that, while the Petitioner demonstrated the substantial merit of his proposed endeavor, he did not establish its national importance. On appeal, the Petitioner reiterates his purported qualifications and cites evidence previously included in the record. On appeal, the Petitioner does not address specific conclusions reached by the Director in denying the petition, nor does he articulate any erroneous conclusion of law or statement of fact. This alone is grounds for summary dismissal. 8 C.F.R. § 103.3(a)(1)(v).

Further, the Director comprehensively discussed the evidence of the Petitioner's proposed endeavor to operate a business in the United States providing scuba diving and water rescue instruction. In accordance with the framework for adjudicating national interest waiver petitions provided in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director considered whether the submitted evidence established that the Petitioner's proposed endeavor had both substantial merit and national importance.[2] The Director explained that the Petitioner did not describe his endeavor with detail sufficient to differentiate it from any other occupation. The Director further explained that the Petitioner did not establish how his endeavor would impact the industry or field more broadly, nor did he demonstrate that the endeavor would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. As stated above, while the Director determined that the Petitioner's proposed endeavor had substantial merit, the Director properly concluded that the Petitioner's endeavor did not reach a level of national importance to warrant a waiver of the job offer requirement. As discussed, the Petitioner provides no indication on appeal as to why this determination on the part of the Director was in error. The Petitioner only revisits assertions concerning his skills and experience; however, evidence of the Petitioner's job experience and performance generally relates not to the national importance of an endeavor, as discussed in the first prong of the *Dhanasar* framework, but to the second. Therefore, we adopt and affirm the Director's decision. *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 record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on the three evidentiary prongs used to evaluate whether an individual qualifies for a national interest waiver.

ORDER: The appeal is dismissed.