U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31134787

Date: MAY 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner intends to own and operate a company that will maintain and repair medical equipment. He seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability or 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 Petitioner qualifies as an advanced degree professional. The Director also went on to discuss the Petitioner's eligibility for a national interest waiver. Specifically, applying the three-prong framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that his endeavor has substantial merit and national importance, (2) did not demonstrate that he is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States. 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 has not established that he qualifies for the underlying EB-2 visa classification as an advanced degree professional[1] and because he has not demonstrated that his proposed endeavor meets the national importance element of the first *Dhanasar* prong. Because the identified grounds for denial are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining elements of the *Dhanasar* framework. *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).

[1] The Petitioner does not claim EB-2 eligibility as an individual of exceptional ability and relies solely on the claim that he is an advanced degree professional to establish that he qualifies for the underlying EB-2 visa classification.

Further, we adopt and affirm the Director's analysis and decision regarding the Petitioner's EB-2 visa classification as an advanced degree professional and the national importance element of the first prong. *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).

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Despite recognizing that the Petitioner was awarded the U.S. equivalent of a bachelor's degree in mechanical engineering, the Director concluded that the Petitioner did not demonstrate that he had at least five years of progressive post-baccalaureate experience in the specialty of mechanical engineering. In discussing evidence pertaining to the Petitioner's experience, the Director pointed to the Petitioner's résumé, which states that he worked as an "Electromedical Engineer or Technician" from June 2013 to July 2017 and from November 2017 to December 2018. He also looked at two employment letters, which also discuss the Petitioner's employment as a medical equipment technician. The record shows that the Petitioner was first informed of this evidentiary deficiency related to his experience in a request for evidence (RFE) to which the Petitioner responded with the employment letters referenced herein.

On appeal, the Petitioner reiterates information from his résumé, where he listed his employment as that of mechanical engineer. However, in describing the two positions he held between 2013 and 2018, the Petitioner listed his duties as "[e]lectromedical engineer *or technician*." (Emphasis added). While the Petitioner asserts on appeal that the two previously submitted employment letters verified his "professional growth and expertise in mechanical engineering," neither letter states that the Petitioner assumed the position of a mechanical engineer. Rather, the letter from [redacted] which discusses the Petitioner's employment from 2013 to 2017, states that he "worked as a Medical Equipment Technician in the sterilization area of the brand [] Steris"; and the letter from [redacted] which discusses the Petitioner's employment from 2017 to 2018, states that he assumed the position of "Technician of Steris Technical Service."

Thus, despite the claims made in the Petitioner's résumé and on appeal, both of which list his prior employment as that of mechanical engineer, the employment verification letters do not support these assertions as both letters state that the Petitioner's post-baccalaureate experience was as a medical equipment technician. Given the listed evidentiary deficiencies, the Petitioner has not established that he has five years of progressive experience in the specialty and qualifies for the EB-2 visa classification as an advanced degree professional.

In addressing the national importance element of the first prong of the framework set forth in *Matter of Dhanasar*, the Director discussed the Petitioner's intent to provide "experienced leadership" in establishing [redacted] a company that would maintain and repair medical equipment in the United States. The Director determined, however, that the Petitioner did not provide sufficient

evidence demonstrating the prospective impact of this endeavor, noting that the Petitioner focused on his own expertise and the importance of the field of the endeavor rather than the endeavor itself. The Director also determined that the Petitioner did not demonstrate that his work stands to impact the regional or national population or that it would broadly impact the U.S. economy at a level that is consistent with having national importance.

On appeal, the Petitioner asserts that the Director did not adequately assess the evidence and reiterates points made in the business plan that was part of the RFE response. However, the business plan lacks specific data to adequately support the Petitioner's assertions about his endeavor's prospective impact in terms of job creation and generation of direct and tax revenue. For instance, the personnel plan lists a CEO, an administrative assistant, and vaguely refers to an unspecified number of "consultants"; it also states that "additional staff members with expertise" may also be hired in the first year as well as "two more staff members to assist in services" during the second year. However, the Petitioner does not explain how these staffing projections stand to impact job creation at a level that is commensurate with national importance.

Further, while the business plan projects a possible profit of $68,535 by the company's fifth year of operation, it is unclear how the anticipated revenue would result in an economic benefit that would impact the nation or the region in which the endeavor would operate. And while the business plan includes pricing estimates for the types of services the Petitioner plans to offer, it lacks sufficient information to show how the projections were calculated. The Petitioner also claims that his endeavor would result in other benefits, such as "increased healthcare efficiency" and "economic growth," but he does not adequately describe the scope of his endeavor or offer evidence demonstrating the endeavor's broader impact at a level that is commensurate with national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889.

In sum, the appeal does not overcome the Director's adverse conclusions regarding: 1) the Petitioner's qualification for the EB-2 visa classification as an advanced degree professional or 2) the lack of evidence demonstrating the national importance element of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

As previously stated, the identified reasons for dismissal are dispositive of the appeal, and therefore we will not, at this time, address any evidence or arguments concerning the Petitioner's eligibility under the remaining elements of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. at 25 (stating that "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. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.