U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31200855

Date: MAY 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as a noncitizen of exceptional ability, 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 the Petitioner was eligible for EB-2 classification as either an advanced degree professional or a noncitizen of exceptional ability. Further, the Director concluded that the Petitioner had not established that a waiver of the classification's job offer requirement, and thus of 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

[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).

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 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 had not demonstrated his eligibility for EB-2 classification as either a member of the professions holding an advanced degree or as a noncitizen of exceptional ability. Further, the Director concluded that the Petitioner had not put forward sufficient evidence to demonstrate his proposed endeavor's national importance, that he was well positioned to advance his endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.[3]

The Petitioner, an engineer who plans on establishing a dredging business, states that he has over ten years of experience working in the field of engineering. He plans to "provide services to individuals and organizations for dredging…for renting dredgers and mini-dredgers with an operator." He further plans to "hire two employees…to ensure the trouble-free operation of equipment."

With his initial filing the Petitioner submitted evidence of his education and experience, an "[a]utobiographical [s]tatement," a letter from counsel, recommendation letters, employment letters, 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 the underlying EB-2 classification and for the national interest waiver. In response, the Petitioner submitted a letter from counsel, an educational evaluation, a new statement titled "My future plans," articles, plans, recommendation letters, and a job offer from [redacted][4]

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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] The Director concluded that the Petitioner's proposed endeavor of dredging met the substantial merit under the first prong of the Dhanasar framework. We agree. A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." Matter of Dhanasar, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in areas including, but not limited to, business, entrepreneurship, science, technology, culture, health, or education.

[4] We note that the Petitioner submitted a job offer for him to work as a production supervisor. In that position, the Petitioner "will be responsible for inventory management and manufacturing of the Tsunami Surveillance System earning $40,000 per year. It is unclear how this job offer relates to the Petitioner's proposed endeavor. The job is contingent on a "background check and receival of permanent resident documentation." 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). In order to fully assess the Petitioner's proposed endeavor, we must understand what the specific endeavor entails.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had not demonstrated his eligibility for EB-2 classification or for a national interest waiver. Specifically, the Director determined that the Petitioner had not demonstrated that his proposed endeavor had national or global implications, had a significant potential to employ U.S. workers, would broadly enhance societal welfare, would broadly enhance cultural or artistic enrichment, or that it offered substantial positive economic effects. Overall, the Director concluded that the evidence did not show that that his proposed endeavor would have any implications beyond his own business and employees, his clients and their employees, and any entities he intends to work with to reach the level of national importance.

Concerning the Director's determination that the Petitioner had not put forward sufficient evidence to demonstrate his eligibility for EB-2 classification as an advanced degree professional, we disagree. Review of AACRAO EDGE shows that Russian educational institutions (e.g., akademija (academia), an institut (institute) or a universitet (university)) award a "diplom spetsialista" in conjunction with the State Attestation Commission following five to six years of education.[5] Further, EDGE states that a "diplom spetsialista" in fields other than architecture, law, and medicine "represents attainment of a level of education comparable to a master's degree in the United States." Lastly, "[t]he credential reflects both a level of academic higher education and the professional license (title) (e.g., Inzhener (engineer), Vrach (medical doctor), Matematik (mathematician), Khimik (chemist), etc.)."

The Petitioner submitted his degree from the [redacted] with a translation. According to the translation, the Petitioner was awarded a "Diploma" and the "qualification of Engineer on specialty."[6] The diploma includes language stating that the "State Examination Commission" issued a decision to award the "Diploma." Based on what AACRAO EDGE references and what the Petitioner submitted, we conclude that the Petitioner holds the equivalent of a U.S. master's degree which qualifies him for EB-2 classification as an advanced degree professional.[7]

Regarding 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.

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[5] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a nonprofit organization representing more than 12,500 admissions professionals in more than 40 countries); see, e.g., Viraj, *LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

[6] The Petitioner submitted an educational evaluation that determined his diploma was equivalent to a bachelor of science and a master of science in the United States.

[7] As we conclude that the Petitioner qualifies for EB-2 classification as an advanced degree professional we reserve our decision as to whether the Petitioner qualifies as a noncitizen of exceptional ability.

On appeal, the Petitioner argues that he qualified for EB-2 classification as either a professional holding an advanced degree or as a noncitizen of exceptional ability. Further, the Petitioner contends that the Director "failed to give due weight to evidence" demonstrating his eligibility for a national interest waiver. The Petitioner argues that his proposed endeavor would enhance societal welfare, is aligned with "federal priorities," and would "reduce shortages of civil engineers." Finally, the Petitioner argues that he is well positioned to advance his proposed endeavor and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[8]

Regarding the Petitioner's argument that the Director's decision "failed to give due weight to evidence," the Petitioner asserts that he submitted sufficient evidence to meet the regulatory and category standards. Therefore, he asserts that the Director did not properly apply the correct standard of proof. Although the evidentiary standard in immigration proceedings is preponderance of the evidence, 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). A petitioner must satisfy the burden of production. This burden requires that a petitioner to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits. Here, the Petitioner has not sufficiently explained how the Director failed to "give due weight" to the evidence in the record. Thus, we conclude that his argument is not supported by the evidence.

The Petitioner contends that his proposed endeavor would enhance societal welfare. On appeal, counsel for the Petitioner asserts that the Petitioner's endeavor is to "not only provide dredging equipment for hire but also the skill, logistical support, and technical knowledge he has developed over his eleven years of experience."[9] And, according to counsel, the endeavor has "many clear environmental and economic benefits that would enhance societal welfare" including "environmental restoration, ecosystem cleanup, conservation of aquatic life[,] and removal of common pollutants." Further, counsel notes that an article submitted in response to the RFE states that "700,000 miles of waterways are impaired by pollution" and that there is a "necessity of modernizing pollution solutions." Assuming that the articles are factually correct, they are general articles. The Petitioner has not met his burden of demonstrating that his specific proposed endeavor is of national importance because he has not put forth evidence of how exactly his endeavor will provide solutions that will have broader implications beyond his specific company and its clients. The Petitioner in his statement titled "My future plans" states that he plans to hire "two employees." He further states that he plans to "attract investors who are also concerned about the state of the US water systems." While his statement provides factual information about dredging and its benefits, we conclude that the statement

[8] We reserve our decision on the Petitioner's eligibility under the second and third prongs of the Dhanasar framework as we resolve this appeal based on the first prong.

[9] Counsel's unsubstantiated assertions do not constitute evidence. See, e.g., 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").

lacks sufficient explanation as to how the Petitioner's endeavor will have a significant potential to employ U.S. workers or substantial positive economic effects. The evidence does not show how the Petitioner's plan to hire two workers is significant or how his endeavor will affect more than himself, his two employees, and any potential customers. The Petitioner has not put forth a business plan or demonstrated that he has access to investments to seed his proposed endeavor.

Next, counsel argues and points to several articles in attempt to show that the Petitioner's proposed endeavor is "aligned with federal priorities." The Petitioner must show how such alignment is of national importance under the Dhanasar framework. For example, the supposition that the "Clean Water Act of 1972 directed trillions of dollars towards improving water quality in the U.S.," even if true, is not sufficient alone to show that Petitioner's proposed endeavor demonstrates eligibility for a national interest waiver under *Dhanasar's* first prong. The evidence must demonstrate that the Petitioner's proposed endeavor has the significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or contribute to the advancement of a valuable technology or field of study to reach the level of national importance. 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual. Further, evidence that shows that a proposed endeavor may have "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area" can illustrate national importance.

In the same way that the teaching activities proposed by the petitioner in Dhanasar were not shown to have a broader impact on the field of STEM education, here the Petitioner has not demonstrated that his proposed endeavor would have broader implications in the field of engineering on the U.S. economy beyond the two employees and clients benefiting from the Petitioner's dredging services. Matter of Dhanasar, 26 I&N Dec. at 893.

In his "Autobiographical Statement," the Petitioner states that "Science, Technology, Engineering, and Mathematics (STEM) touches every aspect of our lives." He further states that STEM "drives innovation in our fast-changing global economy." The Petitioner asserts that his field of engineering is "one of those fields that few people understand but is vital to every country's economy and growth." USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security. 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policy-manual. While the Petitioner's endeavor of dredging as detailed in his RFE response directly relates to the STEM field, the evidence submitted is insufficient to demonstrate that his specific proposed endeavor has sufficiently broad potential implications to reach national importance.

Lastly, counsel contends that the Petitioner's proposed endeavor would "reduce shortages of civil engineers." However, the first prong of the Dhanasar framework looks to a proposed endeavor's broader implications for a field or region. Thus, the Petitioner's argument that his proposed endeavor would reduce an asserted shortage of civil engineers in the United States does not address of the substance of *Dhanasar's* first prong and thus does not meet the burden of proof required.

III. CONCLUSION

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.

ORDER: The appeal is dismissed.