U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31094041

Date: MAY 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a petroleum engineer, 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. 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. The Director concluded that the Petitioner did not demonstrate that he merits a discretionary waiver of the job offer requirement in the national interest. 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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.

Id. at 889.

II. ANALYSIS

The Petitioner proposes to work in the United States as a petroleum engineer expert. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree. We agree with the Director's determination.[2]

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that the Petitioner did not demonstrate his proposed endeavor has substantial merit or is of national importance, as required by the first prong of the Dhanasar analytical framework. While the Director found that the Petitioner established that he is well positioned to undertake the endeavor under *Dhanasar's* second prong, he did not establish 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 under *Dhanasar's* third prong. Upon de novo review, the Petitioner has not established that a waiver of the labor certification would be in the national interest.[3]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor a petitioner 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 is of national importance, we consider its potential prospective impact. Id.

As a petroleum engineer expert for oil and gas operators, the Petitioner indicates that his work will focus on "cost effective and environmentally sustainable approaches towards recovery of hydrocarbons to meet the growing energy demands and energy security of the United States." By leveraging his experience using digital technologies, he states that he intends "to achieve remarkable reduction in cycle times and risk, accelerated returns and productivity alongside measurable reduction in emissions, carbon footprint and cost. . . . As such, his work is proposed to benefit the national interest in terms of both the economy and the environment." In addition to his proposed work with oil and gas operators, he intends to continue being a "mentor and technical advisor" to industry

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] To demonstrate he is an advanced degree professional, the Petitioner submitted his diploma, his academic transcript, an academic evaluation, and employment verification letters. The record demonstrates that he holds the foreign equivalent of a U.S. bachelor's degree followed by more than five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

professionals and students through the Society of Petroleum Engineers and other U.S. institutions. As a mentor and technical advisor, the Petitioner would "provide advisory support and guidance to students in science, technology, engineering, and mathematics (STEM) on pre-requisites and discipline requirements for digital technology adoption." Lastly, he would engage in educational efforts for high school students through his charitable foundation. Upon de novo review, the Petitioner has established that his proposed endeavor has substantial merit. We withdraw the Director's finding to the contrary.

In determining the Petitioner did not establish his proposed endeavor is of national importance, the Director indicated that the Petitioner did not provide a sufficiently detailed plan of his endeavor to establish it has the potential to broadly impact the field commensurate with national importance. Because the petition and the Petitioner's statements lacked detail of his proposed work, the Director assumed he intends to work as a petroleum engineer and manager and determined that he did not establish that his work would extend beyond his prospective employer to impact the industry more broadly. Upon de novo review, the Petitioner has not established that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

On appeal, the Petitioner contends that the Director misapplied the standards set out in Dhanasar and did not adequately evaluate the evidence. The Petitioner takes issue with the Director indicating that he did not submit details of his proposed endeavor. He reiterates his intent "to use his expertise to work with oil and gas operators across the globe" explaining that his professional experience designing advanced digital solutions would be "beneficial in measurement of carbon, aiding carbon capture and abatement mechanisms, safety improvement, operational reliability at reduced risk levels and lower unit development costs." He claims that his work helping the United States meet its carbon footprint reduction target and achieve clean energy security would benefit the U.S. economy, energy supply, and the environment. To support his assertions, the Petitioner argues that he submitted "significant documentary evidence" of his work showing how it has national and global implications, would broadly enhance societal welfare, and aligns with goals of U.S. government entities.

The Petitioner's appeal mainly relies on his statements, articles, and reports to show that his work as a petroleum engineer expert will have broader implications in the petroleum industry, as well as environmental, economic, and societal benefits to the United States. The Petitioner claims his statements sufficiently detail his proposed endeavor and the basis for it being of national importance.

However, instead of focusing on his endeavor to demonstrate it is of national importance, the Petitioner's statements mainly focus on his experience in the field. For instance, in his updated statement, the Petitioner claims, "[m]y in-depth expertise, working with oil and gas operators across the globe, will be of immense importance to the oil and gas and energy sector of the United States; combating the energy dilemma and ensuring cleaner energy is sustainably produced." He also claims that his experience with "applications of digital solutions" would be beneficial to executing projects "with improved return on investment" which would help the United States reduce its carbon footprint and achieve clean energy security. The Petitioner's reliance on his professional knowledge and experience to establish the national importance of his proposed endeavor is misplaced. His professional knowledge and experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake is of national importance under

Dhanasar's first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. Id. at 889.

The Petitioner's statements generally characterize his work as "digital solutions," however, he does not sufficiently detail such digital technology solutions or how his endeavor would be different from work typically performed by petroleum engineers. For instance, the Petitioner has not detailed or established his plans to introduce novel technologies or petroleum engineering advancements that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulated how he will contribute to development of our nation's petroleum industry. Instead, the Petitioner generally emphasizes leveraging his experience on projects with digital technologies to "yield positive impacts to the United States' energy sector." Without further details and evidence, the Petitioner has not demonstrated his work as a petroleum engineer expert for oil and gas operators has the potential to impact his field more broadly rising to the level of national importance.

The record includes recommendation letters from his colleagues to show his work in the petroleum engineering field has benefited his employers, their clients, and the industry. The letters attest to the Petitioner's technical knowledge and his work with specific projects. For instance, letters from his current employer and its client describe the Petitioner's work as a petrophysicist and manager for client projects where he successfully provided technical delivery of oil and gas wells. His employer and its client attest to the Petitioner's work interpreting the hydrocarbons in the environment and integrating those findings in the conceptual design and field development planning for proper well placement. Additional letters from the Petitioner's former employers also attest to his technical expertise in detecting hydrocarbon entry into the wellbore and how his work benefited the clients and their projects.

However, the content of these letters also relates to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Petitioner's proposed endeavor. The letters attest to his technical competencies and professionalism which helped his employers, colleagues, and clients. They describe the Petitioner's role for certain successful projects for his employers, including his project work detecting and evaluating hydrocarbons for proper well placement to ensure efficient and maximum recovery of oil and gas. We acknowledge that the Petitioner provided valuable petroleum engineering services for his employers and their clients, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance.

In Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. We explained that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. Here, the evidence in the record mainly focuses on the Petitioner's work with his former employers and does not demonstrate that the Petitioner's proposed endeavor will have the claimed national or global implications in the field of petroleum engineering.

The Petitioner further argues that his endeavor impacts a matter described by the U.S. government as having national importance or is the subject of national initiatives. His appeal references energy

reports to show the United States is the world's leading producer of oil and gas and the expected increase in growth of the industry. With such expected increase in demand for oil and gas production, the Petitioner stresses a great need to produce cleaner energy with lower emissions of carbon dioxide. The record includes articles and reports related to the rise of U.S. emissions due to increased natural gas consumption, and U.S. government initiatives supporting clean energy and reducing carbon emissions. We recognize the overall benefits of clean energy to the environment, economy, and society, as well as attracting qualified professionals in related careers. However, working in the gas and oil field as a petroleum engineer expert is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of an industry or the need for workers in a specific industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. at 889.

Lastly, the Petitioner contends that his proposed endeavor is of similar national importance to that of the petitioners in Dhanasar and in another one of our previous decisions. He maintains his endeavor "well matches" that of Dhanasar which was found to relate to U.S. government initiates supporting military and national security interests. While the Petitioner states that his proposed endeavor is similar to that of the beneficiary in Dhanasar, he does not sufficiently explain how his proposed work as a petroleum engineer expert for oil and gas operators is similar to that of the beneficiary in Dhanasar as a researcher of air and space propulsion systems except that each relates important government issues. We acknowledge the importance of clean energy to the environment and the economy; however, the Petitioner has not sufficiently detailed how his work has the potential to provide the claimed benefits. We must decide each case on its own facts with regard to the sufficiency of the evidence presented. Matter of Frentescu, 18 I&N Dec. 244, 246 (BIA 1982); Matter of Serna, 16 I&N Dec. 643, 645 (BIA 1978).

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner's claims that his work with gas and oil operators will benefit the United States with a reduced carbon footprint and cleaner energy security have not been established through independent and objective evidence. Without sufficient documentary evidence that his proposed work as a petroleum engineer expert extends beyond his prospective employers and their clients to impact the field or the U.S. economy, society, or the environment more broadly, the Petitioner has not demonstrated by a preponderance of evidence that his proposed endeavor is of national importance. The economic, societal welfare, and environmental benefits that the Petitioner claims depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between his petroleum engineering work and those claimed benefits. Therefore, the Petitioner has not met the first prong of the Dhanasar framework.

Because the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. This basis for denial is dispositive of the Petitioner's appeal, and we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting 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. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, he has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.