U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31125002

Date: MAY 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is human resources manager who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business, 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 although the Petitioner established that he qualifies for the underlying EB-2 visa classification as an individual holding an advanced degree,[1] he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Applying the three-prong analytical 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 national importance,[2] (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. *Id.* 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 specific proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. Because the 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 two remaining *Dhanasar* prongs. *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 record contains and degree certificate and corresponding transcript showing that the Petitioner completed the required coursework and was awarded a bachelor's degree in business administration in August 2006 and that he subsequently attained at least five years of progressive experience in the specialty as required by 8 C.F.R. § 204.5(k)(2).

[2] The Director concluded that the Petitioner's endeavor has substantial merit.

Further, we adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's endeavor. *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).

In addressing the issue of national importance, the Director discussed the Petitioner's proposed endeavor to own and operate a business where he will act as CEO and head consultant in a firm that will offer services concerning human resources matters. Namely, the Director acknowledged the Petitioner's submission of a business plan, which includes hiring and revenue projections and estimates of tax contributions that will result from the Petitioner's business. However, the Director determined that the Petitioner neither provided corroborating evidence in support of those projections nor demonstrated that this endeavor would result in substantial positive economic effects on a level that is commensurate with national importance. Likewise, the Director noted that the record contains insufficient evidence that the Petitioner's endeavor would broadly impact the field of human resources or that it would result in substantial economic benefits to the regional or national economy.

The Director also acknowledged the Petitioner's submission of an advisory opinion letter from a U.S. university associate professor, noting that the letter clarifies the Petitioner's experience and achievements in the field of endeavor and discusses evidence in the record. However, the Director determined that the record lacks evidence to support assertions concerning the endeavor's national importance. Therefore, after contemplating the projected employment levels, revenue, and tax contributions of the proposed endeavor, the Director concluded that the Petitioner did not provide sufficient evidence that his endeavor would offer substantial economic benefits or that it would substantially impact the U.S. job market at a national importance level.

On appeal, the Petitioner alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the Appellant." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate eligibility for the EB-2 classification and a national interest waiver, he does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner further contends that his endeavor will create "ripple effects upon key commercial and business activities" that will go beyond his business and the clients he plans to serve. However, the Petitioner focuses primarily on ways in which his services will benefit his clients and does not provide evidence to demonstrate that his work as the owner of a consulting firm would result in an impact of

regional or national importance or that he would operate on such a scale as to create an impact at the national importance level.

In addition, the Petitioner asks that we further consider his business plan and résumé, explaining that the business plan offers a "detailed plan for creating jobs through managing and developing his business in the U.S." However, as noted above, the Director specifically mentioned the Petitioner's business plan and explained how it falls short of demonstrating the national importance of the proposed endeavor. And while the Petitioner's résumé highlights his credentials and work experience, evidence of the Petitioner's knowledge, skills, education, and experience involves considerations that pertain to *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar,* 26 I&N Dec. at 890. The Petitioner's credentials and professional experience do not demonstrate the national importance of the proposed endeavor or establish that the impact of that endeavor would extend beyond the Petitioner's company and prospective clients.

Lastly, the Petitioner refers to articles containing research about "the important role that business development professionals play in every type of business." The Petitioner asserts that such articles demonstrate his endeavor's national importance "due to its economic implications." We disagree. As the Petitioner himself points out, the articles highlight "the important role" of business professionals and do not discuss the Petitioner's specific endeavor. As such, the articles are not sufficient to demonstrate that the proposed endeavor is likely to result in "substantial positive economic effects" at a level that is commensurate with having national importance. *Id.*

In sum, the Petitioner has not provided evidence that his endeavor meets the national importance element of the first prong of the analytical framework in *Matter of Dhanasar.* Because the Petitioner has not overcome the Director's conclusion regarding this issue, he has not established that he merits a national interest waiver.

ORDER: The appeal is dismissed.