U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31109191

Date: MAY 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an architect, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. The Director found the Petitioner eligible for EB-2 classification as a member of the professions holding an "advanced degree." *See* section 203(b)(2)(A) of the Act. But the Director concluded that the Petitioner did not demonstrate the merits of his national interest waiver request. On appeal, the Petitioner contends that the Director erred in finding insufficient evidence that: his proposed endeavor has "national importance;" he is "well positioned" to advance it; and a waiver would, overall, benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we affirm the Director's finding that the Petitioner has not established the purported national importance of his proposed venture. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as advanced degree professionals or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this immigrant visa category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016).

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Colombian native and citizen, earned a bachelor's degree in architecture in his home country. He founded a building construction company in Colombia and served as its general manager for about 10 years.

In the United States, the Petitioner proposes to help build affordable and disaster-resilient housing, initially in Florida. He stated that he will use "computer assisted design" and "building information modeling" to develop new housing and enhance existing structures. He stated: "My proposed endeavor is to take advantage of my extensive experience in construction, residential housing, disaster-resilient infrastructure and design, and civil engineering in order to improve access to housing within the United States."[1]

B. EB-2 Eligibility

The record supports the Director's finding that the Petitioner qualifies for EB-2 classification as an advanced degree professional. The Petitioner documented his possession of a foreign degree equating to a U.S. bachelor's degree in architecture followed by more than five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

C. Substantial Merit

We also agree with the Director that the Petitioner has demonstrated the substantial merit of his proposed endeavor. A proposed venture may have substantial merit if it "has the potential to create a significant economic impact" or relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889.

[1] The record does not specify whether the Petitioner would work for a U.S. employer or establish his own company in the United States like he did in Colombia.

The Petitioner submitted evidence indicating that his proposed endeavor could create more affordable and disaster-resilient housing in the United States. We therefore agree that his venture has substantial merit.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An 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.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

The Director concluded that the Petitioner did not demonstrate that his proposed endeavor has national importance. The Director found insufficient evidence that the venture would "extend beyond an organization and its clients to impact the industry or field more broadly." The Director also found that the Petitioner did not sufficiently explain how his specific work would trigger substantial positive economic benefits on a national level.

The record supports the Director's conclusion. The Petitioner's statements and supporting evidence do not demonstrate the proposed endeavor's purported national importance. Neither his statements nor the housing-related news articles and reports he provided explain how his particular endeavor would substantially boost the national economy or advance the U.S. architecture or construction field. Also, the Petitioner has not established that his work would benefit an economically depressed area.

On appeal, the Petitioner maintains that his evidence supports the proposed endeavor's national importance. He states that the materials demonstrate a shortage of affordable U.S. housing and – with increasing numbers of floods, wildfires, droughts, hurricanes, and other extreme weather incidents – an urgent need to make U.S. homes disaster-resilient.

The Petitioner, however, appears to misunderstand the "national importance" requirement. Under the *Dhanasar* framework, the term involves a specific venture's "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. Thus, the fact that affordable and disaster-resilient housing are nationally important issues demonstrates that the Petitioner's proposed endeavor has substantial merit, not national importance. To establish national importance, he must demonstrate that, in those areas, his proposed venture would have a nationally important impact.

The Petitioner argues that, when determining the proposed endeavor's national importance, the Director improperly considered recommendation letters for the Petitioner. He states that the letters show that he is well positioned to advance the endeavor, not that the venture is nationally important. He asserts that the Director wrongly required the recommendation letters as evidence of national importance. *See Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008) (in petition proceedings for a "special immigrant" religious worker under section 101(a)(27)(C) of the Act,

8 U.S.C. § 1101(a)(27)(C), finding that USCIS may not impose additional threshold requirements that are plainly erroneous or inconsistent with regulations).

Contrary to the Petitioner's argument, however, the record does not indicate that the Director *required* the recommendation letters to demonstrate national importance. Rather, the Director simply found – on her own – that the letters did not demonstrate national importance. In general, the Director found insufficient evidence – including the Petitioner's statements and the housing-related articles and reports – to establish the venture's purported national importance. The Director's consideration of the recommendation letters as evidence of national importance was therefore at most "harmless error." *See Salmeron-Salmeron v. Spivey*, 926 F.3d 1283, 1286 (11th Cir. 2019) (stating that "a mistake of an administrative body . . . that clearly had no bearing on the procedure used or the substance of the decision reached" is harmless error) (citation omitted); *see also Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021).

The Petitioner also contends that the Director improperly disregarded evidence of the proposed endeavor's national importance that the Director herself had requested. The Director's RFE states that evidence of an endeavor's national importance can include proof that a venture "[i]mpacts a matter that a government entity has described as having national importance or is the subject of national initiatives." The Petitioner argues that it submitted such evidence, including documentary evidence that President Biden's administration has delegated funds to help U.S. communities prepare for extreme weather and climate-related disasters and to enhance the country's aging infrastructure to withstand increasing numbers of climate-related disasters.[2]

The RFE, however, lists such materials only as an example of possible national importance evidence. The RFE does not state that such evidence is determinative. *See generally* 6 *USCIS Policy Manual* F.(5)(D)(4), www.uscis.gov/policy-manual ("As in all cases, officers must consider the totality of circumstances to determine whether each of the three [*Dhanasar*] prongs is established by a preponderance of the evidence.") Here, the Petitioner's evidence did not sufficiently establish the proposed endeavor's national importance because it did not explain how his specific venture would substantially boost the national economy or advance the U.S. architecture or construction field.

Finally, the Petitioner asserts that, by finding that the impact of the Petitioner's proposed endeavor would not extend beyond his employer and clients, the Director's decision contradicts *Dhanasar*. The Petitioner notes that, when considering national importance, the *Dhanasar* framework does not focus on a venture's potential geographical reach. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90 ("In modifying this prong to assess 'national importance' rather than 'national in scope,' as used in [*Matter of N.Y. State Dep't of Transp.*, 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998], we seek to avoid overemphasis on the geographic breadth of the endeavor.")

[2] *See* "FACT SHEET: Biden Administration Announces Nearly $5 Billion in Resilience Funding to Help Communities Prepare for Extreme Weather and Climate-Related Disasters," Aug. 9, 2021, www.whitehouse.gov/briefing-room/statements-releases/2021/08/09/fact-sheet-biden-administration-announces-nearly-5-billion-in-resilience-funding-to-help-communities-prepare-for-extreme-weather-and-climate-related-disasters/; *see also* Fed. Emergency Mgmt. Agency, "Building Resilient Infrastructure and Communities," www.fema.gov/grants/mitigation/building-resilient-infrastructure-communities.

The Petitioner, however, appears to misconstrue the Director's decision. The decision finds that the Petitioner "has not established that his proposed endeavor has implications beyond his current employer (or prospective employer), their business partners, alliances, and/or clients/customers and his prospective co-workers/employees or workplace at a level sufficient to demonstrate the national importance of his endeavor." The finding does not specifically refer to potential geographical implications of the endeavor. The remainder of the decision also does not expressly mention geographical implications. We therefore find that, consistent with *Dhanasar*, the record does not demonstrate the decision's improper focus on the endeavor's geographical breadth.

For the foregoing reasons, the Petitioner has not demonstrated that his proposed endeavor has national importance or that the Director improperly adjudicated the issue. We will therefore affirm the petition's denial.

E. The Remaining Issues

Our decision regarding the national importance of the Petitioner's proposed venture resolves this appeal. Thus, we decline to reach and hereby reserve consideration of his appellate arguments about his positioning to advance his venture and a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate appellate issues where a noncitizen did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has not demonstrated that his proposed endeavor has national importance. Thus, under our framework, he does not qualify for a national interest waiver. We will therefore affirm the petition's denial for lack of a job offer and labor certification.

ORDER: The appeal is dismissed.