U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31112249

Date: MAY 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or 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 employment based second preference (EB-2) 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. *See 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of the 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.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion

grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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 has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

Whilst the Director found that the Petitioner qualifies as a member of the professions holding an advanced degree, the Director concluded the Petitioner's substantially meritorious proposed endeavor was not of national importance, nor were they well positioned to advance their proposed endeavor such that on balance a waiver of the requirement of a job offer and labor certification would be beneficial to the United States.

Our authority over USCIS service centers, the office that adjudicated the immigrant petition, is comparable to the relationship between a court of appeals and a district court. So based on a de novo review we will adopt and affirm the Director's decision that the Petitioner did not demonstrate that their proposed endeavor had potential prospective impact rising to a level of national importance. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Prado-Gonzalez v. INS,* 75 F.3d 631, 632 (11th Cir. 1996) (joining "every court of appeals that has considered this issue" holding that an appellate body may affirm the lower court's decision for the reasons set forth therein); *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue").

The Petitioner asserts the Director arbitrarily exercised their discretion by failing to address all evidence, citing *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) in support. The court in *Buletini*, however, did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. But the Petitioner has not demonstrated the specific way the Director's analysis was incomplete other than a generalized assignment of error. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor it is necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (Citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). We conclude the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

We, like the Director, give individualized consideration to the evidence the Petitioner submitted with their initial petition and their response to the Director's request for evidence (RFE).[1] We agree with the Director's well-reasoned decision that the Petitioner does not qualify for a national interest waiver. In *Dhanasar*, we 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. The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit.

The Petitioner's proposed endeavor was the "provision of consulting services and marketing strategies to U.S. companies" chiefly in the automotive sector to help "increase their profitability, ensure their sustainability, and improve their internal processes and technological tools." The Petitioner identified the beneficial impact to the national interest of their proposed endeavor through broader benefits to the U.S. economy by supporting "the automotive sector through tax benefits, the development of commercial and digital marketing strategies, digital content, and technological platforms to improve efficiency, increase sales and profits, and achieve customer loyalty." In response to the Director's RFE, the Petitioner elaborated that they would conduct their proposed endeavor through their own entrepreneurial venture, [redacted] They also stated that their "extensive experience in digital marketing and market entry" would support government initiatives promoting the sales of electric vehicles.

But the record did not adequately demonstrate that the benefits they identified to purportedly flow from their proposed endeavor, even if realized, would impact their field beyond the companies in or

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

adjacent to the automotive sector utilizing their services. Or in other words, the record did not sufficiently describe how the Petitioner's provision of marketing strategies and consulting services" would permeate to impact matters beyond the cadre of businesses that engaged the Petitioner for their services. Moreover, the Director noted the importance of the automotive industry in the U.S. economy when they correctly concluded the Petitioner's proposed endeavor was substantially meritorious. However, the articles and reports the Petitioner submitted, whilst sufficient to demonstrate the proposed endeavor's merit, did not adequately describe the national importance of the Petitioner's proposed endeavor. In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The impact of a proposed endeavor on a geographical "national or regional level" is not required if a petitioner demonstrates broader implications rising to a level of national importance. But the articles and reports the Petitioner submitted were general in nature. They did not adequately describe the role of the Petitioner's proposed endeavor in a manner whereby it could be determined that the Petitioner's endeavor had national, or even global, impact on the field or broader implications rising to a level of national importance.

And, to the extend the Petitioner asserts that their proposed endeavors operation and function in the "automotive industry" would bring positive economic effects, the evidence in the record does not materially, relevantly, or probative demonstrate those effects rising to a level implicating matters of national importance. The evidence the Petitioner emphasizes on appeal as supporting the national importance of their proposed endeavor mainly supports the merit of their endeavor and is silent about the specific endeavor they intend to undertake. As we stated earlier, in determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Director's decision correctly summarized the articles and reports the Petitioner submitted to conclude they did not demonstrate the specific proposed endeavor's positive economic effect. And the other evidence contained in the record, such as the Petitioner's business plan, did not sufficiently describe the endeavor's positive economic effects.

We also stated in *Dhanasar* 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. The Petitioner cites *Love Korean Church v. Chertoff*, 549 F.3d 749 (9th Cir. 2008) to assert the Director imposed "novel criterion" when they concluded that the economic benefits cited by the Petitioner did not rise to a level of national importance because the Petitioner had not shown benefits to the regional or national economy. We disagree. The Director's reference to "the regional or national economy" is not a geographical constraint but refers to the Petitioner's assertions citing evidence in the form of articles and reports that described the importance of the automotive industry to the U.S. economy. It is consequently reasonable for the Director to evaluate the Petitioner's proposed endeavor from the frame of reference of the regional or national economy as described in the articles and reports the Petitioner submitted into the record to support their assertions. The Petitioner also expressed a nascent intention to establish their proposed endeavor in a Small Business Administration (SBA) designated HUBZone, the record does not adequately establish the parameters the SBA considers in establishing HUBZones. So we cannot evaluate whether the underutilized business zones the SBA identifies are akin to the

economically depressed areas within which creating employment could be a potential positive economic effect. [2] Consequently the record as it is currently composed does not indicate that these prospective benefits rose to a level of national importance either through their broader implications influencing matters in the national interest or potential positive economic effects, such as influencing greater employment levels in historically high unemployment areas.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, consideration of the remaining prongs of *Dhanasar* would serve no legal purpose. So, we hereby reserve them. *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 alternate issues on appeal where an applicant is otherwise ineligible). So, we conclude that they have not established that they are eligible for or otherwise merit a national interest waiver of the job offer requirement, and thus of a labor certification. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

[2] The HUBZone program's goal is to promote business growth in underutilized business zones with the goal of awarding 3% of federal contract dollars to companies that are HUBZone certified. Joining the HUBZone program makes a business eligible to compete for certain federal contracts in the "set-aside" category. There are several required qualifications to participate in the program, but the most dispositive requirement for purposes of our analysis is that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. Whilst it is unknown and the record is silent about what if any federal programs exist in the "set-aside" category for endeavors like the one proposed by the Petitioner, the record is crystal clear that the Petitioner's proposed endeavor would be wholly owned and controlled by the Petitioner and that the Petitioner is not a U.S. citizen, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. Based on the record, it appears the Petitioner would not be eligible to participate in the HUBZone program administered by the SBA.