U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34042554

Date: NOV. 04, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chief executive/entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 Nebraska Service Center denied the petition, concluding that the record did not establish eligibility for a national interest waiver. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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, 889 (AAO 2016), 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.

Id.

II. ANALYSIS

In denying the petition, the Director determined, among other findings, that the Petitioner had not established that his proposed endeavor has national importance.[3] The Petitioner intends to work as a chief executive / entrepreneur by opening, establishing, operating, and growing a non-profit business that offers high-quality interstate refrigerated trucking transportation and repair services. On appeal, as it specifically relates to the first prong of the *Dhanasar* analytical framework, the Petitioner renews claims that his proposed endeavor is nationally important because it will enhance the revenue of U.S. companies, create jobs, and generate tax revenue. He also contends that as his company will be based in Illinois, it will help fuel small business' growth in historically underutilized areas. In support of these claims, the Petitioner refers on appeal to the industry reports and articles he submitted before the Director. He also provides data and information regarding the roles of chief executives, entrepreneurship, and small businesses in the United States.

Upon de novo review of the record and the Petitioner's arguments on appeal, we adopt and affirm the Director's decision relating only to prong one of the *Dhanasar* analysis regarding national importance with the comments below. *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 this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Here, the Petitioner must establish the national importance of his proposed endeavor rather than the importance of the transportation industry and frozen food sales. In other words, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus

[2] *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 is discretionary in nature).

[3] The Director determined that the Petitioner's endeavor was shown to have substantial merit. The Director additionally determined that the Petitioner is well-positioned to advance the proposed endeavor.

on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In determining national importance, "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.* at 889.

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. Such effects need not be national in scale but must demonstrate a potential prospective impact that is "substantial" to a particular area, region, or industry.

We agree with the Director that the Petitioner has not established that his proposed endeavor sufficiently extends beyond his future clients to impact the transportation industry more broadly at a level commensurate with national importance. We also agree that the Petitioner has not provided independent, corroborating evidence to support his claims of substantial economic effects. As the Director noted, although the Petitioner claims that his endeavor will generate revenue and create jobs in an economically depressed area, he did not support these claims with evidence such as market studies or documents regarding possible clients. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (a petitioner must support assertions with relevant, probative, and credible evidence).

Furthermore, the Petitioner did not elaborate or explain his argument on appeal that the Director applied an improper standard of proof in denying his national interest waiver. He does not, for example, identify any unusual requirements imposed.[4] The Director thoroughly analyzed the material submitted with the initial filing and in response to a request for evidence, such as the Petitioner's business plan and industry reports and articles, and analyzed the Petitioner's national importance claims under the first prong of *Dhanasar* to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets this requirement.

Because the Petitioner did not establish 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, as a matter of discretion. Further analysis of the remaining eligibility requirements, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).