U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34867180

Date: NOV. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the real estate industry, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 the record did not establish the Petitioner's eligibility for the requested 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. 8 C.F.R. § 204.5(k)(2).

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,[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.

II. ANALYSIS

The Director determined that the Petitioner qualified as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner did not demonstrate eligibility under the *Dhanasar* framework and dismiss the appeal.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Id.* at 889.

The record reflects that the Petitioner intends to operate a real estate consulting company, [redacted] to provide comprehensive and strategic consulting services relating to pre-negotiation, negotiation, and post-negotiation processes in the real estate industry. According to the business plan, the company will market its services to small and medium-sized businesses in a variety of industries, including retail businesses, healthcare facilities, residential real estate, warehouse facilities, office spaces, as well as hotels and rental companies operating within the accommodation sector. The company's services will include strategic feasibility analysis, documentation preparation and analysis, budget planning and management, negotiation assistance for acquisitions, construction and post-construction oversight, contract management, and regulatory compliance and licensing. Additionally, the Petitioner asserted his company could provide training on a variety of subjects including real estate investment, market trends, regulatory compliance, and risk management through educational webinar series. According to the Petitioner, his company will enable informed decision-making and financial prudence in real estate transactions, resulting in increased economic activity, job creation, and the strengthening of small and medium-sized businesses. And the Petitioner asserted that his company could increase the availability of low-income housing to address the housing shortage crisis in the United States.

In support of his endeavor, the Petitioner submitted a five-year business plan, an expert opinion letter, several articles, industry reports, and government fact sheets relating to the real estate industry, and the economic impact of small and medium-sized businesses, as well as government initiatives to

[1] *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).

address the housing crisis in the United States. The Petitioner also provided recommendation letters detailing his extensive experience in the field, and commendations he received from others in the industry, as well as articles discussing the Petitioner and his proposed company's operations.[2]

After issuing a request for evidence (RFE) allowing the Petitioner an opportunity to provide additional evidence and information relating to the national importance of his proposed endeavor, the Director denied the petition. In their decision, the Director concluded that the Petitioner did not establish the national importance of his endeavor because the record did not show its prospective impact would extend beyond his prospective clients to lead to broader implications to the industry or field at a level commensurate with national importance. Moreover, the Director determined that the Petitioner did not establish that his endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects as contemplated in *Dhanasar*. *See Dhanasar* at 890. And, while acknowledging the Petitioner's assertions in the record regarding his company's prospective impact on the affordable housing crisis, and other national initiatives, the Director nonetheless concluded that the Petitioner had not shown that his endeavor would broadly impact these initiatives at a level commensurate with national importance, or otherwise broadly enhance societal welfare.

On appeal, the Petitioner generally disagrees with the Director's conclusions, and asserts that the Director did not properly consider the evidence in the record that established the national importance of his endeavor, in particular the contents of his business plan. Additionally, he claims that the Director imposed a higher burden of proof beyond the preponderance of evidence standard, and misapplied the *Dhanasar* framework. As an examples of this, he asserts that the Director erred by concluding that the evidence did not establish the prospective impact of the proposed endeavor because the Petitioner did not corroborate his ability to invest approximately $50,000 to support his company's operations. Specifically, he claims that the requirement to provide corroborating evidence of his financial resources is misplaced and is more applicable to investment visas, like the EB-5 immigrant visa, and that the Petitioner's financial resources are not relevant to his EB-2 NIW petition. Notably, however, while we agree with the Petitioner that it would be inappropriate to evaluate the EB-2 NIW petition under the same financial requirements as investment visas, the Petitioner does not establish that the Director did apply this standard, as the Director did not require the Petitioner to establish a threshold amount of financial support, but rather noted that the Petitioner did not submit evidence corroborating their statements in the record regarding the company's startup investment. Moreover, while we conclude that the Petitioner's ability to provide the initial business investment claim is more relevant to the evaluation of the Petitioner's satisfaction of the second prong,[3] the Petitioner has not established that the Director's analysis of his financial support prejudiced him. It is not enough to generally assert errors in a decision. The Petitioner must also establish that they were prejudiced by any claimed errors. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *See e.g., Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)).

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

[3] *See Dhanasar* at 890. (explaining that in evaluating whether a Petitioner is well-positioned to advance their proposed endeavor "we consider factors including . . . a model or plan for future activities") *see also 6 USCIS Policy Manual* D.1, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5 (confirming the relevance of evidence of an endeavor's financial support to demonstrate whether an individual is well-positioned to advance their endeavor.)

And the Petitioner contends that, because he established that his company had the significant *potential* to employ U.S. workers, the company established its national importance under *Dhanasar*. First, the Petitioner previously made this same claim to the Director in response to their RFE, which the Director addressed in their decision, however instead of acknowledging the Director's conclusions, the Petitioner resubmits the same argument verbatim on appeal. Nonetheless, upon review, we agree with the Director's analysis. While *Dhanasar* utilizes the phrase "potential" to employ U.S. workers, it does not provide that simply having the potential to create a nominal number of jobs is the standard that petitioners must meet to demonstrate the proposed endeavor has national importance. First, the *Dhanasar* precedent offers additional context relating to economics in that it requires the endeavor to have "*significant* potential to employ U.S. workers or [have] other *substantial* positive economic effects, particularly in an economically depressed area." (*Dhanasar*, 26 I&N Dec. at 890) (emphasis added). Accordingly, the consideration of the employment of U.S. workers should be evaluated as to whether it also has a *substantial* economic effect. Accordingly, we agree with the Director's analysis and will not interpret the *Dhanasar* decision in the manner the Petitioner proposes.

Moreover, we are also not persuaded by the Petitioner's assertion that the record establishes that his endeavor has a significant potential to employ U.S. workers. While we acknowledge the employment and revenue projections in his business plan, including the creation of 18 jobs[4] and the generation of $5 million in tax revenue over its first five years of operations, the business plan provides little explanation and objective basis of these projections. Moreover, even if the endeavor's revenue and job creation projections were sufficiently corroborated, they do not establish that the endeavor would operate on a scale rising to the level of national importance, nor has the Petitioner sufficiently explained and supported with documentary evidence how his proposed employment numbers and revenue would impact the area of intended operations on a scale commensurate with national importance. On appeal the Petitioner asserts that his business activities will result in tax implications, and therefore contribute to local services and fulfill tax obligations. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance.

We are also not persuaded in the Petitioner's claims that the Director asserted that "national importance can only be demonstrated by presenting evidence" of the significant potential to employ U.S. workers in an economically depressed area," as the record does not support this assertion. The Director evaluated the Petitioner's claims and established that the evidence did not show that the endeavor would result in the substantial economic effects discussed in *Dhanasar,* concluding that although the Petitioner is not required to establish the economic effects are national in scale they must still establish that the endeavor will result in *substantial* economic effects. And as stated, we agree

[4] We also acknowledge the Petitioner's concerns regarding the Director's statements relating to the company's employment of 7 workers or potentially 33 workers, because the Petitioner claims that the evidence in the record does not include figures reflecting 7 nor 33 hirings. However, we note that based on their projected employment, the record contains a letter documenting the company's regional input-output modeling system, in which the writer of the business plan asserts the company will generate 7 jobs in the first year of operations, and 33 in its fifth year of operations. Accordingly, we are not persuaded by the Petitioner's assertions regarding the thoroughness of the Director's review of the record. Rather, it appears the Director considered the larger scope of employment projections in concluding that the Petitioner had not established that the company would result in substantial economic effects.

with the Director that the evidence in the record does not establish the Petitioner's company will result in substantial economic effects.

Turning to our de novo review of the record, we agree with Director's evaluation of the evidence, and conclude it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework. 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).

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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

On appeal, the Petitioner continues to rely on the real estate industry in general, as well as the economic importance of small and medium-sized companies, but does not establish the broader impact of his *specific* endeavor. And, although the Petitioner's statements in the record reflect his intention to provide valuable services to his customers, the record does not support his assertions that his work will result in broader implications to the field, beyond the potential benefits to his immediate customers. For example, while the Petitioner claims that his company will focus on expanding the availability of affordable housing, the business plan in the record does not support this assertion or establish *how* the Petitioner intends to do so, as the business appears to be predominantly serving as a consultancy to guide small and medium-sized businesses through real estate transactions. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Accordingly, we are not persuaded by the Petitioner's assertions that his company will impact federal initiatives aimed at addressing the shortage of affordable housing in the United States. Moreover, while his endeavor's alignment with federal initiatives may speak to the substantial merit of the endeavor, it does not establish the specific endeavor's potential prospective impact because the record does not establish that the Petitioner's endeavor will meaningfully impact this initiative.

Additionally, the Petitioner contends that his endeavor will result in broader implications to the field because he will provide training and publish research on the real estate industry. And, in response to the Director's conclusion that the Petitioner did not provide sufficient details regarding the proposed training, the Petitioner asserts that sufficient information was provided in his business plan. Yet, instead of pointing to the evidence submitted to the Director, he submits a new addendum to his business plan prepared after the denial, which provides details relating to his proposed research as well as the content of the training programs he intends to provide. However, this evidence does not satisfy the Petitioner's burden. First, because the Petitioner was put on notice and given a reasonable

opportunity to provide this evidence and information before the Director, we will not consider it for the first time on appeal. See 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). Moreover, while we recognize the Petitioner's claims that he could provide this training to others in the field, he does not explain how any prospective training would impact the field at a level commensurate with 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. *Dhanasar* at 893. Here too, we agree with the Director that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his prospective customers to impact his field more broadly at a level commensurate with national importance.

Additionally, while his business plan discusses providing training as a marketing tool, the Petitioner has not provided insight into how much time he plans to dedicate to training or to his research as opposed to providing the services detailed in the business plan. On appeal, the Petitioner claims that his submission of his past published articles "demonstrates unequivocally" his expertise and commitment to conducting new research. Yet, as stated, the Petitioner did not provide an explanation of the research he intends to conduct moving forward before the Director, or explain how he would disseminate this research to the field. Additionally, while the Petitioner points to a non-precedent case involving an assistant professor and researcher who intended to continue publishing and researching in their field, we do not find the Petitioner's case sufficiently similar to the case referenced, as that Petitioner clearly identified their intent to continue researching and publishing as their endeavor. Moreover, the non-precedent decision referenced by the Petitioner was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Here, the Petitioner has not established that the facts of the instant petition are analogous to those in the non-precedent decision.

In addition, while the testimonial evidence in the record, such as the recommendation letters, establish that the Petitioner has had a successful career within the real estate industry, the letters do not analyze the Petitioner's specific proposed endeavor or offer evidence of its impact, beyond commenting on his expertise. A petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor. We conclude that he has not.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we

decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.