U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34828788

Date: NOV. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an immigration document preparer and 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for a waiver of the job offer requirement 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 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.

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:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The first prong of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance. We agree with the Director that the submitted documentation establishes the Petitioner's proposed endeavor has substantial merit. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner previously stated that his company "would help immigrants who recently entered the country, as they do not know how to fill out the forms they need for the process they are about to apply for, or do not have the financial funds to cover the fees that an [i]mmigration [l]awyer might charge for his or her assistance. As a [l]egal [p]reparer, I would assist them in filling out each form, explaining each of the questions or items that must be answered, translating them, if necessary, and verifying that the applicant feels confident with what they are putting on the form, thus giving them the confidence that they are in control of their immigration process." He further mentioned that his company would provide limited non-legal assistance to primarily Spanish speakers; hire individuals to review forms; and establish alliances with non-profit organizations, insurance companies, tax companies, and immigration lawyers.

In addition to the above statement, the Petitioner previously submitted immigration and government records, recommendation letters, education records, professional certificates, financial and company records, a resume, and articles on the economic potential of the United States and the economic impact of immigrants in the workforce

The Director reviewed the record in finding that the Petitioner did not establish that the proposed endeavor has national importance. The Director mentioned the articles submitted by the Petitioner. However, the Director stated that the relevant issue is not the importance of the profession rather it is the proposed endeavor and its impact on the broader field. The Director next referenced the Petitioner's business plan which includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a description of company personnel, and information on the Petitioner's education and work experience. The Director noted the staffing and revenue projections in the business plan, but that they were not supported with details showing their basis or an explanation as to how they would be realized. Additionally, the Director found that the record lacked sufficient evidence to show that the proposed endeavor would prospectively generate benefits that expand beyond the Petitioner's customers to have a national impact. The Director stated that the Petitioner did not provide evidence that the area the company would operate in is economically depressed, the proposed endeavor would influence his field, or his

methods are unique or better than those already found in the United States. The Director concluded by finding that the Petitioner did not provide sufficient evidence of the prospective endeavor's potential prospective impact, including broader implications, or national or global implications within the field; significant potential to employ U.S. workers; substantial economic effects, particularly in an economically depressed field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, the Director concluded that the Petitioner did not establish the proposed endeavor is of national importance.

On appeal, the Petitioner submits new evidence including business expansion plan documents, tax returns, a sales forecast, a profit and loss statement, future organizational charts, budget records, a job training proposal, information on community issues in [redacted] where the company is located, and a professional development plan. He claims that his company will impact the U.S. economy by hiring U.S. workers. He asserts that the job training and development programs will foster a high-performing workforce and attract young adults from high-risk situations, thereby stimulating economic growth and improving community welfare. We note that the Petitioner was put on notice and given a reasonable opportunity to provide this evidence previously. Specifically, the Petitioner was issued a request for evidence (RFE). In the RFE, the Director discussed why the Petitioner did not establish that the proposed endeavor has national importance and provided a list of evidence that would establish it. We are not obligated to consider the new evidence 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").

We adopt and affirm the Director's decision as it relates to prong one of the *Dhanasar* analysis regarding national importance. *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). The Director reviewed evidence submitted by the Petitioner, discussed the evidentiary deficiencies in detail, and correctly analyzed the Petitioner's national importance claim. On appeal, the Petitioner has not overcome the findings made by the Director. Specifically, the Director found that the record lacked sufficient evidence to establish the claimed staffing and revenue projections in the business plan; that the proposed endeavor would prospectively generate benefits that expand beyond the Petitioner's customers to have a national impact; that the area the company would operate in is economically depressed; that the proposed endeavor has significant potential to employ U.S. workers, otherwise offers substantial positive economic effects, or would influence his field; and that his methods are unique or better than those already found in the United States. The Director correctly concluded that the Petitioner did not establish the proposed endeavor has national importance.

The Petitioner has not established that he meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, he has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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).

ORDER: The appeal is dismissed.