U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34895056

Date: NOV. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 although the Petitioner is an advanced degree professional, he did not establish 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. Section 203(b)(2)(B)(i) of the Act. Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." *Id.*

While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar,* 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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. at 889.

II. ANALYSIS

The Petitioner filed this petition on February 28, 2024. After analyzing the initial evidence, the Director issued a request for evidence (RFE), noting the deficiencies in the record and provided the Petitioner a non-exhaustive list of evidence he could submit to satisfy his burden. The Petitioner timely responded, and the Director denied the petition concluding that although the Petitioner is eligible for EB-2 classification as an advanced degree professional, he did not establish that a waiver of the job offer, and labor certification requirement, is in the national interest because he did not meet the first and third *Dhanasar* prongs. On appeal, the Petitioner contests the Director's determination and asserts he meets all three of the *Dhanasar* prongs.

Upon de novo review, we agree with the Director's determination that the Petitioner qualifies for classification as a member of the professions holding an advanced degree. As such, the only remaining issue is whether the Petitioner's endeavor meets the *Dhanasar* framework for a discretionary national interest waiver.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.* As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

The Petitioner filed this petition to carry out his proposed endeavor of working as a consultant in the field of financial services and accounting, through his company, [redacted] (the Company). The Company provides the following services: tax preparation, tax and financial planning, bookkeeping, business formation, public accounting, auditing, financial investigation, forensics, education and training. The Director summarized the Petitioner's evidence and analyzed why it did not establish his eligibility for a national interest waiver. In so doing, the Director addressed the Petitioner's assertions that the economic impact of his proposed endeavor rendered it of national importance within the meaning of prong one of the *Dhanasar* framework. In addition, the Director addressed the Petitioner's assertions related to the importance of his field of accounting and financial services, and the evidence he provided to establish his endeavor would have broader implications.

However, the Director's decision determined that the impact of the Petitioner's endeavor did not extend beyond his current and future clients. We agree.

On appeal, the Petitioner submits a brief, reasserting his eligibility for a national interest waiver and contends that the Director erred in their determination. Specifically, the Petitioner asserts that the Director erred by not considering the six letters of intent he provided in his RFE response. The Director's rationale is supported by the regulation at 8 C.F.R. § 103.2(b)(1), which requires a petitioner to establish their eligibility for a benefit at the time of filing the benefit request. And, even if this evidence is considered, the letters do not establish the proposed endeavor's national importance because they only highlight that the endeavor's impact is to the individual clients and companies that hire the Petitioner to provide his services. Furthermore, to the extent the letters reference a shortage of professionals in the Petitioner's field, the U.S. Department of Labor directly addresses labor shortages through its labor certification process. Finally, because the Petitioner submitted several letters of intent to hire him with his initial petition, and these were considered in the Director's analysis, the Petitioner's assertion that the Director erred is unpersuasive.

Next, the Petitioner, citing to *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008), asserts that the Director erred in their prong one analysis by considering each piece of evidence individually rather than cumulatively and in its totality. In their analysis, the Director considered the probative weight of the evidence based on its relevance to the Petitioner's burden as required by *Matter of Chawathe*. *See Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). In particular, the Director considered the Petitioner's business plan, industry reports and news media articles, letters of support from a senior manager at [redacted] and the founder of [redacted] letters of intent from potential clients, and the administration's policies aimed at attracting more STEM professionals. The Director noted, however that while these documents and evidence establish the proposed endeavor's substantial merit, they do not establish its national importance because the scope of the proposed endeavor's impact is limited to its clients.

We acknowledge the Petitioner's assertion that because his business plan projects to open offices beyond his initial location in [redacted] the prospective economic impact of his endeavor is "substantial" as required by *Dhanasar*. However, *Dhanasar* explained that a proposed 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." *See Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner has not established his endeavor has met this standard. We further acknowledge the Petitioner's plan to incorporate generative artificial intelligence into its tax technology strategy, which it asserts will lead to innovation, and broadly enhance societal welfare and bring cultural enrichment. The Petitioner also highlights how his notary public services are matters affecting national initiatives because notaries are essential to authenticating documents and fighting fraud. We acknowledge that reducing fraud is a matter of government initiatives and concern, however the Petitioner's evidence does not establish his endeavor will reduce fraud or address these matters at a level commensurate with national importance. *See Matter of Chawathe*, 25 I&N Dec. at 375.

We adopt and affirm the Director's decision regarding the Petitioner's eligibility under the first *Dhanasar* prong. *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).

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, because the Petitioner has not established his eligibility under prong one, we decline to reach and hereby reserve the Petitioner's arguments regarding the third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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). We will also reserve our review of the Director's determination that the Petitioner met prong two of the *Dhanasar* framework. *Id.*

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor, and consequently that a waiver of the job offer and labor certification process, in the exercise of our discretion, is in the national interest.

ORDER: The appeal is dismissed.