U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33960638

Date: NOV. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a battery test engineer, seeks classification as a member of the professions holding an advanced degree. *See* 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 EB-2 immigrant 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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies for underlying EB-2 classification as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. 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.[2]

The Petitioner initially stated that his proposed endeavor is "to develop and optimize materials for use in lithium batteries and soft electronics in order to contribute to advances in the transportation and healthcare sectors." He indicated that he plans to continue pursuing his proposed endeavor as a battery test engineer at F-E-, Inc. and that his work includes designing materials for high energy density lithium batteries; executing laboratory tests to support battery performance analysis, safety testing, and quality assessment projects; analyzing research data and reporting results at an appropriate technical level for the intended audience, such as vendors, suppliers, and customers. He further indicated that his proposed endeavor is distinct from his position of employment at F-E-, Inc. and his employment "serves as [his] chief opportunity to pursue [his] proposed endeavor at this time." In response to the Director's request for evidence (RFE), the Petitioner's updated statement indicated that his proposed endeavor is "to develop and optimize materials for lithium batteries and soft electronics to promote advances in the electric transportation sector and clean energy storage." He reiterated that his proposed endeavor is distinct from his plans for continued employment at F-E-, Inc., now as a senior battery engineer, and indicated that in addition to that previously listed above, his work also includes presenting the new technologies and research findings at conferences.

The Director reviewed the totality of the evidence in the record, including the Petitioner's statements, letters of recommendation, education and credential information, specific citations, and industry reports and articles.[3] The Director determined that the Petitioner established the proposed endeavor's

[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).

[2] The Director did not make a finding as to whether the Petitioner established that he is well-positioned to advance the proposed endeavor or whether, 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 second and third prongs of the *Dhanasar* framework.

[3] This is a non-exhaustive list of evidence the Petitioner submitted in the record. While we may not discuss every document submitted, we have reviewed and considered each one.

substantial merit but not its national importance. Regarding substantial merit, the endeavor's merits may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. In determining that the Petitioner did not establish the national importance of his proposed endeavor, the Director determined that the Petitioner had not demonstrated that the specific endeavor he proposes to undertake has a significant potential to impact the field of endeavor, to employ U.S. workers, or otherwise offers substantial positive economic effects for our nation. The Director concluded that the petitioner had not shown that benefits to the regional or national economy resulting from his proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. The Director noted that while the letters of support and expert opinion letter provided details about the Petitioner's accomplishments, they did not explain how the Petitioner's numerous personal accomplishments constitute recognition of achievements and significant contributions to the industry or field of engineering and lack supportive information concerning how such personal achievements affected the industry or field as a whole. The Director also noted that the evidence indicated the potential prospective impact of the petitioner's proposed activities constituting the endeavor is mainly to the petitioner's employer and its customers and does not demonstrate how the petitioner's specific endeavor has national or even global implications. The Director concluded that the petitioner had not shown that working for and providing his expertise to F-E-, Inc. would undoubtedly benefit the United States through increased income, employment of U.S. workers, and contribution to the country's gross domestic product (GDP). The Director further concluded that the Petitioner had not shown that his work has been served as an impetus for progress in the field, that it has affected the engineering field, or that it has generated substantial positive discourse in the broader community.

On appeal, the Petitioner reiterates his statements in the record, provided in his initial support letter and personal statement, as well as his RFE response and updated statement, and claims that the evidence does in fact establish the substantial positive economic impact and national importance of the proposed endeavor. The Petitioner highlights portions of his personal statement and indicates that his research into lithium-ion battery optimization directly aligns with the clean energy generation and transportation goals of the United States, demonstrating its broader industry impact and indicating that the impact is not just confined to his employer and customers. He then asserts that he provided ample detail regarding the need for innovations in lithium battery density, especially in reducing the costs of electrical vehicles and meeting the U.S. Department of Energy's Battery500 Consortium's goals, impacting the national economic competitiveness of the United States. Further, the Petitioner claims that the Director's analysis reflects "the agency's failure to properly apply the law and to consider all of the relevant evidence[, which] constitute[s] an abuse of discretion." The Petitioner claims that the Director did not examine the entirety of the evidence presented and did not discuss all of the evidence submitted. Finally, the Petitioner asserts that the Director used an incorrect standard to assess the potential economic impact of the proposed endeavor and claims that the evidence does in fact establish the substantial positive economic impact of the proposed endeavor.

Upon de novo review, we agree with the Director that the Petitioner's endeavor has substantial merit but does not satisfy the national importance element of *Dhanasar*'s first prong. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs. *See id.* (requiring that petitioners establish all three prongs in order to establish eligibility).

First, we are not persuaded by the Petitioner's claim that the denial is deficient because the Director did not review the entirety of the evidence in the record. In support of this claim, the Petitioner states that the failure to consider all of the relevant evidence submitted has been found to constitute an abuse of discretion and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mi. 1994). While we agree that an adjudicator should consider the relevant evidence in the record,[4] we also note that U.S. district court decisions, such as the one the Petitioner cites, are not binding precedential authority. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). More importantly, however, the Petitioner does not sufficiently support his claim that there was relevant evidence that the Director did not consider.

The Petitioner bases this claim on the fact that the Director did not explicitly identify or reference his descriptions of the proposed endeavor, or his personal statement submitted with his RFE response. However, the Director acknowledges review of the Petitioner's supporting evidence and RFE response, describing the contents of the record accurately. The fact that these documents are not referenced by name is not indicative of a failure to consider the evidence. *See Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention."). *See also Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (joining the Seventh and the Federal Circuit Courts of Appeals in presuming that the Board reviewed all of the evidence of record). Therefore, we do not find sufficient support for the Petitioner's claim that the Director failed to consider all of the evidence in the record.

Next, we note that the Petitioner has not addressed all of the Director's conclusions on appeal. While the Petitioner reiterates and highlights the research he will continue to perform on appeal, he does not directly address the Director's concerns regarding how the Petitioner will achieve his goal to have a national impact in the materials engineering industry by continuing his work of research in the field of lithium-ion battery optimization through his employment at F-E-, Inc.; how his proposed endeavor stands to produce benefits that extend beyond his employer, clients, or collaborators; how his proposed endeavor in lithium-ion battery optimization will stand to impact the field on a national or global scale or that it stands to sufficiently extend beyond the individuals he would serve, to impact the engineering industry or field more broadly; or how his proposed endeavor's economic impact would have significant potential to employ U.S. workers or have other substantial positive economic effects.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *See Dhanasar*, at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to

[4] *See* 8 C.F.R. § 103.2(b)(1).

employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner stated that his current employment at F-E-, Inc. provides him the opportunity to pursue his proposed endeavor, which is distinct from his position of employment. He indicated that his proposed research work is to develop a liquid fluorinated electrolyte and a reliable battery cycling system to improve the energy density of lithium metal batteries up to 500 Wh/kg, and that his research plan will align with the goal of the Battery500 consortium to deliver high energy density cells and extended cycling life, benefitting the United States by developing more efficient energy storage devices. He also indicated that his other proposed research work is to improve the stability and safety of lithium metal batteries, which will benefit the United States in building a safer and reliable energy storage infrastructure since a successful validation of the safety-enhanced battery materials could be applied to different types of designs and applications. While this generalized information addresses the importance of the industry, field, or profession in which the Petitioner proposes to work, it is not the relevant question for determining whether the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have national importance. *See id.* Here, none of the generalized information regarding energy, lithium batteries, transportation, and medical research the Petitioner submitted discusses the Petitioner, the specific endeavor he proposes to undertake, and how the specific endeavor may have the type of broader implications indicative of national importance. *See id.* The generalized information does not discuss how the specific endeavor the Petitioner proposes to undertake may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances," or "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," or any other broader implications that may indicate national importance. *See id.* In turn, the Petitioner's references to prior research he has conducted relate to the second *Dhanasar* prong--whether an individual is well positioned to advance a proposed endeavor--but they do not relate to whether the specific endeavor the Petitioner proposes prospectively to undertake may have national importance. *See id.* at 888-91.

The Petitioner submitted evidence of his publications and citation record to establish how his past research success suggests that his future endeavor will have a similar impact. While we acknowledge that evidence of the impact of his past work provides a basis to suggest that his future work will have a similar impact, this past research acclaim does not in itself establish the national importance of the proposed endeavor. Here, the Petitioner has not identified the specific nature of his proposed future activities so that we might determine the endeavor's possible impact. The Petitioner has not established how his past research record supports a finding that his future work will have a similar impact or that such impact would rise to the level of national importance.

The record includes letters of support from academics specializing in the fields of advanced materials and manufacturing and engineering who speak favorably about how the Petitioner's past research has contributed to the field of materials engineering. While these letters discussed the broad impact of the Petitioner's previous research to the overall national interest of the United States and how his work has improved public health and technological advancements, the authors demonstrate little knowledge concerning the Petitioner's proposed endeavor. Overall, we observe that the authors broadly report the same information about the Petitioner's past research topics. While research must add information

to the pool of knowledge in some way in order to be accepted for publication, this alone is insufficient to substantiate a claim of impact to the field.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.,* 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, although the authors discuss the nature of the work the Petitioner has performed in the past, they offer little specific information concerning the Petitioner's prospective future endeavor. As such, these letters are of little probative value regarding the first prong of the *Dhanasar* analytical framework, as they do not meaningfully address the details of the proposed endeavor and why it would have national importance. The Petitioner also presented articles and industry reports discussing the importance of energy, lithium batteries, transportation, and medical research in the United States. However, while the articles and reports offer useful background information, they are of little probative value in this matter as they do not discuss the impact of the Petitioner's specific proposed endeavor.

Simply obtaining employment or conducting research in a worthy field or industry, such as materials engineering, does not warrant a national interest waiver. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's proposed research does not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, 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. *Id.* at 893.

In addition, the Petitioner has not sufficiently demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. The evidence does not show that the Petitioner's activities performed during his continued research while continuing his employment at F-E-, Inc. would have economic impacts beyond the clients and customers served by his employer such that it will have broader implications for others in the United States.

Finally, we note the Petitioner's statements regarding his expertise and prior career accomplishments in the field of materials engineering. These statements, however, address aspects of the second *Dhanasar* prong but do not address how the proposed endeavor in the United States has broader implications beyond his immediate employer and its clients, as required by the first *Dhanasar* prong. *See id.*

The Petitioner's claims on appeal do not overcome the basis for the Director's findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, the Petitioner 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).

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.