U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34886437

Date: NOV. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil construction project director, 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 the Petitioner had not established eligibility for 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 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. We agree with the Director's conclusion that the Petitioner's proposed endeavor has substantial merit. However, the record does not show the proposed endeavor has national importance.

In the instant matter, the Petitioner intends to use his expertise and knowledge in the business field to work as a civil engineer in the real estate and construction sector in the United States. The Petitioner established [redacted] and is looking to purchase land for this project. He also started [redacted] investing in the acquisition of residential units in Florida.

On appeal, the Petitioner asserts that the Director erred in concluding that he did not establish the national importance of the endeavor. The Petitioner claims that the denial did not contest that the benefits of the proposed endeavor are commensurate with national importance under the Dhanasar framework, and that the decision lacked a full discussion of the deficiencies in the record.

The standard of proof in this proceeding is 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.

Although the Petitioner contends that the publications included in the petition and on appeal serve to demonstrate the potential prospective impact of the proposed endeavor, the record lacks documentation to make this conclusion. Specifically, the Petitioner references a report that notes that, "building 100 affordable rental homes generates $11.7 million in local income, $2.2 million in taxes and other revenue for local governments, and 161 local jobs in the first year alone". The Petitioner states that this report supports the contention that his endeavor will generate national economic impacts, however the statement is supportive of a local impact and the Petitioner fails to explain how

the impact will reach the national level. The articles referenced by the Petitioner on appeal and included in the record such as "Introduction to U.S. Economy: Housing Market" addressing the ways in which housing can enhance communities, do not establish the specific endeavor's potential prospective impact. Without a detailed analysis of the endeavor's benefits to the regional or national economy, the Petitioner's descriptive plans lack information on how the projected employment estimates would utilize a significant population of workers in the area or would substantially impact job creation and economic growth either regionally or nationally.

Similarly, the Petitioner maintains that the articles on the economic impact of small businesses such as "How Small Business Drives U.S. Economy", "Why Small Business Is Important to the Economy", and "Why Is Entrepreneurship Important?" support his initiative, but the matter here is not whether small businesses are nationally important. Rather, the Petitioner must demonstrate the national importance of his small business, the proposed real estate development company.

Moreover, the Petitioner contends that the expert opinion letter from [redacted] discusses the specific endeavor and the positive economic effects for individuals, families and the economy, among other assertions. While the letter explains that there is a shortage of homes and that rising home prices have decreased the number of homes at a lower price point, the letter does not detail how the endeavor would have broader implications for the country outside of Florida, and therefore does not demonstrate the national importance of the Petitioner's endeavor.

Further, while we recognize that the Petitioner's plans to develop quality affordable housing, initially in Florida and with intentions to expand outside of Florida, align with federal initiatives aimed at improving housing, this is not sufficient to establish its national importance. The Petitioner did not show how his proposed real estate and construction companies have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. While the Petitioner continues to make general claims regarding the "extensive impacts beyond his served companies and clients on scale sufficient to conclude that his proposed endeavor is of national importance", the Petitioner did not sufficiently explain or demonstrate how his particular proposed endeavor would have any projected U.S. economic impact or job creation. Without such evidence, the record does not show any benefits to the U.S. regional or national economy resulting from the endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.