U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34829245

Date: NOV. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical engineer/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 had proven his eligibility for a 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 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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. at 889, 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.

II. ANALYSIS

The Director determined that the Petitioner demonstrated his eligibility for EB-2 classification as a member of the professions holding an advanced degree. We agree.[2] Concerning the national interest waiver, the Director determined that the Petitioner had not demonstrated that his proposed endeavor was of national importance, that he was well-positioned to advance the endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of the job offer, and thus of a labor certification. The Director did not reach the issue of whether the Petitioner's proposed endeavor is of substantial merit.

The Petitioner, a mechanical engineer, intends to open a "Consulting, Advising, and Solutions Company in Automative Mechanical Engineering." He states that he has over 15 years of experience in the field including as a railway engineer and supervisor in train operations and as an auditor and consultant of the production process. Further, the Petitioner states that his proposed endeavor "is based on the Automative Mechanics Market" in the United States and that his endeavor will serve the business to business "(B2B) market at a national level." This B2B market includes factories and vehicle assemblers, car rental agencies, auto part companies, vehicle dealers, and vehicle insurers.

With the initial filing, the Petitioner submitted evidence of his education, experience, and of his proposed endeavor. Following initial review, the Director issued a Request for Evidence (RFE) allowing the Petitioner an opportunity to submit additional evidence to attempt to establish eligibility for EB-2 classification and a national interest waiver.[3] The Petitioner's response to the RFE included a cover letter with embedded excerpts of already submitted evidence, an expert opinion letter from Dr. [redacted] a business plan, and already submitted evidence.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that the Petitioner had not demonstrated the national importance of the proposed endeavor, that the Petitioner was well-positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job

[1] *See also 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 to be discretionary in nature).

[2] The Petitioner submitted educational documents and transcripts showing five years of coursework, and an education evaluation stating that the Petitioner's degree is equivalent to a bachelor of science in mechanical engineering. Additionally, the Petitioner submitted job letters indicating at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3).

[3] Due to a clerical error, the Director deemed the Petitioner's case abandoned for failure to timely respond to a Request for Evidence. The Petitioner filed a motion to reopen and the Director granted it on April 24, 2024.

offer, and thus of a labor certification. We agree that the Petitioner has not established the national importance of the endeavor as required by *Dhanasar's* first prong, and reserve on the remaining issues as the issue of national importance is determinative on its own.

A. National Importance

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.[4] In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

On appeal, the Petitioner argues that he has satisfied all three prongs of the *Dhanasar* framework. Regarding national importance, the Petitioner states that his endeavor is of national importance because it will maintain U.S. "competitiveness in the global automative market, driving innovation and the adoption of cutting-edge technologies," essential for technological and industrial leadership. He also asserts his endeavor will help to combat climate change, train a skilled workforce to be "prepared to lead technological innovation," and will reduce local unemployment by creating job opportunities. He also claims his endeavor will reduce traffic accidents, increase public safety, and strengthen the U.S. automative industry.

After reviewing the totality of the evidence, we conclude that the Petitioner has not satisfied the first prong of the *Dhanasar* framework.[5] We look to the evidence documenting the "potential prospective impact" to evaluate whether a petitioner's proposed endeavor satisfies the national importance requirement. 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. Here, we find that the record does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently extend beyond his business's clientele to impact vehicle factories and assemblers, car rental companies, auto parts companies, dealers, and insurers more broadly at a level commensurate with national importance. Further, the Petitioner has not demonstrated that his endeavor has a significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. The Petitioner has not shown that his company's prospective business activity, staffing levels, and resultant tax revenue are likely to produce substantial economic benefits to the [redacted] area of Florida, where he plans to operate from, or in the United States.

While the evidence illustrates the Petitioner's intention to provide business to business services to the automotive mechanics market in the United States, his arguments regarding the broader impacts are not sufficiently supported and appear attenuated from his proposed endeavor. The Petitioner contends that his proposed endeavor is aligned with U.S. policies regarding critical and emerging technologies (CETs), entrepreneurism, STEM, and the mechanical engineering profession in the United States and

[4] The Director did not make a determination regarding the substantial merit of the Petitioner's endeavor. We find that the Petitioner has demonstrated the substantial merit of his endeavor. "[M]erit may be established without immediate or quantifiable economic impact." 6 USCIS Policy Manual F.5(D)(1) quoting *Matter of Dhanasar*, 26 I&N Dec. 884, 892 (AAO 2016).

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

Florida. He also cites to the importance of immigrants to the U.S. and to potential job creation. He notes supply chain and business potential, tax collection, as well as positive impacts in an economically depressed area. He additionally cites to the value of knowledge transfer, and unnamed economic, environmental, cultural, and social impacts. However, the record does not contain sufficient evidence to support the Petitioner's contentions. While the Petitioner states that his endeavor will "offer creative services aimed at reformulating production processes," he has not demonstrated exactly how that end would be accomplished. The Petitioner has not shown that his endeavor will offer "improved manufacturing processes" or similar outcomes that would translate into national implications in the field. *Id.* at 889.

Review of the Petitioner's business plan indicates that he foresees his endeavor creating jobs (for engineers, technicians, and other professionals), causing technological innovation, reducing carbon emissions, saving lives by improving vehicle safety, and strengthening the automotive production chain. Having provided a strategic overview, the Petitioner's business plan does not detail how the intended goals will be operationally realized. For instance, the business plan states that technological innovation will result from "[s]ignificant investments in research and development (R&D) [that] will enable the company to create advanced solutions in energy efficiency, vehicle safety and automation." Yet, the evidence in the record does not provide concrete details that show how the endeavor will effectuate the Petitioner's claims.

The Petitioner submitted an expert opinion letter from Professor [redacted] We acknowledge that the expert opinion letter includes an asserted analysis of the proposed endeavor's national importance. After reviewing the Petitioner's qualifications and providing his opinion on why the Petitioner is well-positioned to carry out the endeavor, Professor [redacted] asserts that the endeavor has national or even global implications for four reasons. First, Professor [redacted] states that the Petitioner's "experience in environmentally conscious, sustainable practices set him apart from other experts in his field." Second, Professor [redacted] states that the Petitioner's "consultancy company seeks to employ" engineers and "implement Electric Vehicles (EVs)." Third, Professor [redacted] references an article concerning the automotive industry to conclude that the Petitioner will "conduct important work" and "impart[] his knowledge" to others and thus societal welfare will be enhanced. Fourth, Professor [redacted] notes that the Petitioner's endeavor is in harmony with the Biden-Harris Administration's intention to strengthen the environmental sustainability of the transportation system.

However, Professor [redacted] letter does not meaningfully address how the Petitioner's proposed endeavor would be effectuated to produce national or global implications within the field, significant potential to employ U.S. workers, or other substantial positive effects. Therefore, we assign less probative value to the letter. For instance, Professor [redacted] states that the Petitioner's experience in sustainable practices sets him apart. However, the Petitioner's abilities go to *Dhanasar's* second prong whether he is well-positioned to carry out the endeavor and not to the endeavor's national importance. Regarding the Professor's statement that the Petitioner's company will seek to employ engineers, nothing shows how employing a limited number of engineers in one metropolitan area in Florida would reach national or global implications. In sum, because the expert opinion letter lacks detailed analysis on how the endeavor's goals will be realized, or reach the scale of national importance, it is of minimal probative value. 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, may give an opinion less weight if it is not in accord with other information in the record. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *Id.*

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the second and third prongs would serve no meaningful purpose. Thus, we decline to reach and hereby reserve our decision on the Petitioner's eligibility under *Dhanasar's* second and third prongs. *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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.