U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33946152

Date: OCT. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or a person of exceptional ability, as well as a discretionary 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 qualifies for the EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts in holding that USCIS' decision on a national interest waiver is discretionary in nature).

II. ANALYSIS

The Director determined, and the record—including a copy of the Petitioner's 2021 doctorate degree in geotechnical engineering from China, school transcript, and diploma evaluation—shows that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional holding a U.S.-equivalent advanced degree. 8 C.F.R. §§ 204.5(k)(1)-(2), (k)(3)(i)(A).

The remaining issue on appeal is whether he warrants a discretionary national interest waiver under the *Dhanasar* framework and its requisite three prongs, any one of which is dispositive. The Director found that the record did not establish that the Petitioner's proposed endeavor has substantial merit or national importance and thus he did not meet *Dhanasar*'s first prong.[2] On appeal, the Petitioner alleges that the Director failed to consider all relevant evidence and properly apply the *Dhanasar* framework. We conclude that the Petitioner's proposed endeavor has substantial merit, and therefore withdraw the Director's finding to the contrary. However, we agree with the Director that the evidence does not establish that the proposed endeavor has national importance as contemplated by *Dhanasar*.

Under the *Dhanasar* framework, the first prong, "substantial merit" and "national importance," focuses on the specific endeavor the Petitioner proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit under this prong may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Petitioner's proposed endeavor, as he describes in his "Proposed Endeavor & Future Plans" statement, "is to develop approaches to analyze the performance of geotechnical structures in order to improve infrastructure safety and manage risk." He specifically intends to achieve this endeavor by "[pursuing] a position as a senior geotechnical engineer" or "a very similar position" with a reputable company in the United States called [redacted] (or a similar company) where he also plans to be able to engage in research in various specialized topics in his field.

Although the proposed endeavor as a senior engineer with an interest in research and development in geotechnical structure analysis and infrastructure safety as described above has merit, the evidence does not demonstrate that it would have significant potential to employ U.S. workers, have substantial positive economic impact in this country, broadly impact the industry on national or global level beyond his proposed employer and its prospective customers, or otherwise have broader economic or societal implications rising to the level of national importance. *Dhanasar*, 26 I&N Dec. at 889-890.

In determining whether the proposed endeavor has national importance, we consider and look for evidence of the endeavor's potential prospective impact. *Id.* In reasserting that his proposed endeavor has national importance, the Petitioner relies on his academic credentials and past experience as a civil and geotechnical engineer in China where he has conducted research and co-authored articles, as indicated in his resume, excerpts of articles referencing his name, support letters, and the general industry reports he submitted below noting the industry's significance. He further reiterates that, given his background and expertise, which he claims highly qualifies him for a senior engineer position with U.S. companies like [redacted] in the industry and its subfields, and their demand for qualified individuals, his proposed endeavor will have substantial positive economic and societal impact.

[2] The Director also determined that the record evidence did not satisfy *Dhanasar*'s second and third prongs.

However, the referenced evidence and assertions focus on his experience and skills and relates to *Dhanasar*'s second prong, which pertains to whether he is well positioned to advance his endeavor and "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. For assessing the national importance of a proposed endeavor under *Dhanasar*'s first prong, we look to its "potential prospective impact" and evaluate whether the specific endeavor the Petitioner proposes to undertake has broader national significance, rather than the importance of his profession or industry in which he proposes to engage. *Id.* at 889. Here, as a senior engineer of a U.S. company, he proposes to develop approaches to analyze and assess the performance of geotechnical structures, improve infrastructure safety, and manage associated risks by utilizing his expertise and innovative research skills he acquired in China. As an engineer of the U.S. company, he also plans to research technical topics such as "analysis of seismic deformation of embankment dam, landfill and geosynthetics reinforced structure." However, the record does not contain any evidence that his claimed innovative research and engineering methods he developed in China were or would be recognized or adopted by the industry in the United States or otherwise have far-reaching implications. Although we acknowledge that the proposed endeavor could have a positive impact on his engineering career and his future employer, he has not persuasively explained, and the record (primarily including his statement, support letters, "independent advisory opinions," excerpts of his co-authored articles, and the general industry reports) does not demonstrate how his proposed work for the company would have the national or global implications for the U.S. industry as he claims, beyond his employer and its prospective clientele.

The Petitioner, for instance, does not claim that as a senior geotechnical engineer, he himself will employee U.S. workers or that his position with his employer will directly result in the company's hiring of U.S. workers. Further, he does not specify, and the record lacks any independent evidence as to, how his proposed work with the prospective company otherwise stands to impact U.S. economy or benefit economically depressed areas. *Dhanasar*, 26 I&N Dec. at 890 (holding that proposed endeavors that have "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area" may indicate national importance). Other than the general assertion that he is "confident [he] can attain [a senior geotechnical engineer position] or a very similar position related to [his] proposed endeavor in the United States," the record lacks probative evidence of any interest in the Petitioner from any individual, institution, or U.S. company and how he will specifically obtain such a position that he claims would further facilitate and elevate the significance of his proposed endeavor to a national level. Moreover, he does not claim that he would be able to advance his endeavor independently, unaffiliated with any company or institution. Although he also asserts in his statement that companies like [redacted] "ha[ve] served the engineers and other professionals responsible for designing, constructing, and operating sustainable infrastructure, essential to the quality of life for everyone, everywhere," the record lacks detail and objective evidence as to how or to what extent his proposed research and development through this (or a similar) company would have substantial positive economic or societal benefits, as he claims. Even if he were hired, the Petitioner's assertions, his professional and publication experience in China, and support letters, do not establish that the proposed endeavor as a company engineer would have "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area." *Id.*

The Petitioner nonetheless continues to highlight, and we acknowledge, his past accomplishments, documented in part by evidence of about a dozen research-based articles he and his co-contributors published in China in his field, most of which were completed while he was still a student and working

as an engineer in China.[3] The record includes excerpts of the articles he co-authored, including one each in 2010, 2011, 2023; two in 2014; and six in 2020. Of these, one paper lists him first, indicating lead authorship; and the remaining ones, as one of two to five contributors. He also avers that some of his research received grants from China's National Natural Science Foundation and were cited many times by others, as indicated by Google Scholar and a Chinese database for citation record ("CNKI") as well as other journal articles referencing his co-authored papers from 2020 and the 2014 [redacted] and that he has even peer reviewed other individuals' work. Although we acknowledge these assertions, the articles referencing his name, and the support letters praising his skills and successes, his past research and publication work primarily relate to whether he is well positioned to advance his endeavor under *Dhanasar*'s second prong, rather than its first prong. We also note that other than the September 2020 paper listing his name first, the extent to which he contributed to the team projects on which the other co-authored articles were based remains unclear. Further, he did not provide any detail or evidence on the grants he claims his past research received (such as qualification criteria, specific recipient(s), amounts, and fund allocations). The evidence also does not sufficiently substantiate the alleged quality of the claimed scholarly or other impact and its durability in the field as a result of his work in China, and as further discussed below, how it specifically would affect the endeavor he proposes to undertake in the United States.

Even assuming he was a major contributor or lead author of all the above referenced papers, directly received fundings in China, and his past citation records reflect notable impact, the specific endeavor he proposes for the instant national interest waiver is to work for a U.S. company as a senior engineer, rather than a researcher, contrary to what his appeal brief implies. While there may be a research component to working for U.S. companies as an engineer, the Petitioner does not claim, and the record does not contain any evidence, that there is a meaningful interest in his proposed research topics in the United States, or that he will be able to conduct and publish his desired research in this country and widely disseminate relevant knowledge (whether under company directives or independently) that would have broader implications in the industry and related academia. He also does not claim, and the record lacks probative evidence, that his foreign research and publications on their own made or will have any industry-wide impact here. Other than the general assertion that his "work will continue to be circulated in the field through [his] peer-reviewed publications," he also does not delineate his future publication goals and how or to what extent he will be able to engage in research and achieve related goals while working as a company engineer. It is thus unclear whether or how his past research will be used in or inform his current proposed endeavor and its claimed future national importance.

Lastly, the Petitioner reiterates, and correctly, that his educational background and proposed endeavor fall within a science, technology, engineering, and mathematics ("STEM") field. But as the Director noted, the record does not contain persuasive explanation or specific evidence that the proposed endeavor to research and develop approaches in the geotechnical structures and infrastructure safety fields as a senior engineer of a U.S. company, has national importance. 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual (stating that with respect to the first prong, *as in all cases*, the evidence still must show that a STEM endeavor has both substantial merit and national importance); *Matter of Chawathe*, 25 I&N Dec. at 375-76 (stating that petitioners bear the burden of

[3] Although he claims that he wrote two "books" in China, the partial evidence he submitted below shows that he was one of 11 co-authors listed for [redacted] in a 2020 book comprised of many other volumes, which lists another person ("Q-A- et al.") as the main author and editor; and one of 38 "chief drafters" of a 2014, 37-page document (consisting of 50,000 word count) titled [redacted]

establishing their eligibility). Here, the record evidence does not establish that his proposed endeavor as a senior engineer of a U.S. company with research and development goals in the stated subjects has broader implications for the related industries, or it specifically furthers STEM objectives in a nationally significant manner, or otherwise show national importance as contemplated by *Dhanasar*.

The importance of the proposed endeavor, as noted, is evaluated by its specific potential prospective impact, rather than by the importance of the profession or industry in which he proposes to engage based on his qualifications he believes ideally position him well for his future endeavor, as also indicated in the support letters and "independent advisory opinions" attesting to his past achievements, potential for future success, and the significance of the industry. *Dhanasar*, 26 I&N Dec. at 889-890. The purpose of the national interest waiver thus is not to facilitate a suitable individual's U.S. job search where there may be job opportunities in the field that may also have national significance. Anyone seeking such a waiver must show "the specific endeavor" they propose to undertake, whether in a STEM field, has national importance. *Id.* The Petitioner has not met his burden of proof.[4]

II. CONCLUSION

While we acknowledge his desire to contribute to the U.S. geotechnical industry and its economy, the Petitioner has not established with specific, probative evidence that his proposed endeavor will have broader implications in his field, have significant potential to employ U.S. workers, or have substantial positive economic or societal effects. The Petitioner has not met *Dhanasar*'s national importance prong and therefore has not established his eligibility for a national interest waiver.

As the identified ground for denial, the Petitioner's inability to satisfy *Dhanasar*'s first prong is dispositive of this appeal, we do not address here the Director's determinations as to the second and third *Dhanasar* prongs for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.

[4] The Petitioner also submits for the first time on appeal a White House "Fact Sheet" on the President's budget for 2025. But the Director's request for evidence specifically notified him of the evidentiary deficiency and provided him an opportunity to submit additional evidence. The record shows he also submitted below general industry reports and articles. We thus decline to consider the new appeal document. 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *see also Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence on appeal where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it before the denial). Even if we were to consider the new appeal document, it does not specifically pertain to the claimed national importance of the proposed endeavor, and he does not persuasively explain its relevance in this context.