U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32717843

Date: OCT. 02, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a teacher, 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 Nebraska Service Center denied the petition, concluding that although the Petitioner qualified for EB-2 classification as an advanced degree professional, he did not establish eligibility for a national interest waiver.

On appeal, the Petitioner submits a brief and requests reconsideration of the adverse decision.

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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate that they qualify 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. As stated, the Director found the evidence sufficient to show that the Petitioner qualified for this classification as an advanced degree professional, and the record supports this finding.[1]

Once a petitioner establishes eligibility for the underlying EB-2 classification, they must then show 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

[1] An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). The record shows that that the Petitioner holds a foreign equivalent of a U.S. bachelor's degree in education (chemistry), and a foreign equivalent of a U.S. master's degree in environmental chemistry.

and Immigration Services (USCIS) may, as a matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that: (1) their 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 requirement would benefit the United States.

The Petitioner indicated in Part 6 of the instant Form I-140, Immigrant Petition for Alien Workers (Form I-140), that he intended to work in the United States as an environmental science teacher. The Director issued a request for evidence (RFE) asking the Petitioner to provide a detailed description of his proposed endeavor and documentation to show its national importance, including information about the endeavor's potential prospective impact. In response, the Petitioner submitted a cover letter, health and safety certificates, and two recommendation letters from his previous and current employers. The Petitioner stated in the cover letter that he was working as a volunteer for a nonprofit human services organization and "could not imagine [himself] doing nothing else with [his] life than to serve other people especially the homeless." He added that his volunteer duties closely related to his field of study (environmental science), while he prepared to take up his teaching responsibilities in the future. The Petitioner explained that he submitted health and safety certificates "to show that [his] area of expertise will help improve Environment or Education system of the United States," and stated generally that "[i]t would be not in the national interest of the United States if [he were] unable to get [his] work Visa to work in [his] profession."

In denying the Form I-140, the Director determined that neither the Petitioner's RFE response, nor the documents and statements he initially provided clearly indicated what specifically he was planning to do in the United States, and USCIS therefore could not adequately assess whether his proposed endeavor satisfied the national waiver criteria under the *Dhanasar's* analytical framework.

In his appellate brief, the Petitioner states that he previously mentioned his intent to become an environmental science teacher and avers that his endeavor has substantial merit and national importance. The Petitioner adds that to fulfill the requirement for the award of his bachelor's degree he researched and presented a dissertation on the need to improvise science lab equipment in senior secondary schools, and that in the near future he plans to design a water filtration system for his students using household items related to ecological concepts. He further states that the reason he came to the United States was to remove his son from the California foster care system and submits his son's school-related documentation. The Petitioner requests us to reconsider the denial of his Form I-140 denial, so that he can remain in the United States and obtain extension of his work permit.

We acknowledge the Petitioner's statements, and the submission of supplemental documentation on appeal. However, we cannot grant his request, as the preponderance of the evidence is still insufficient to establish his eligibility for a national interest waiver.

The first *Dhanasar's* prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or

[2] *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).

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

The Petitioner clarifies that he intends to work in the United States as an environmental science teacher and that his future plans in this occupation include designing a water filtration system for his students using household items related to ecological concepts. To assess whether an endeavor has national importance required under the first prong of the *Dhanasar's* analytical framework, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* Accordingly, "we look for broader implications" of the proposed endeavor and consider whether "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Here, the Petitioner does not explain and does not offer evidence to demonstrate how his proposed work as an environmental science teacher might impact the field of education or environmental science more broadly. We must therefore conclude that he has not met his burden of proof to demonstrate that his intended teaching activities satisfy the "national importance" element of the *Dhanasar's* first prong. *See id.* at 893 (finding that a noncitizen's proposed teaching activities did not rise to the level of having national importance absent evidence that they would impact his field more broadly); *see also generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (stating that endeavors such as classroom teaching, for example, without broader implications for a field or region, generally do not rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver).

Because the Petitioner is ineligible for a national interest waiver on this basis alone, we need not address at this time whether his proposed endeavor satisfies the "substantial merit" requirement of the *Dhanasar's* first prong, or whether he meets the national waiver criteria under the *Dhanasar's* second and third prongs. Instead, we reserve those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

ORDER: The appeal is dismissed.