U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33942069

Date: OCT. 03, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an engineer, 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 the EB-2 visa classification, that the proposed endeavor was of national importance, that the Petitioner is well positioned to advance the endeavor, or that it would be beneficial to waive the requirements of a job offer. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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. *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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. NATIONAL INTEREST WAIVER

As a preliminary matter, we observe that the certificates of translation included in the petition are inadequate. Any document in a foreign language must be accompanied by a full English language translation, and a certification from the translator that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). The certificates of translation included with the initial petition state under the description of translated document that they relate to "[s]upporting documents, work letters, letters of recommendation, resumes, civil documents, other supporting documents." The certificates included in the response to the request for evidence (RFE) states that they pertain to "[d]iplomas, certificates, supporting documents." The record contains a wide variety of documents that are not clearly deliniated in these captions. Such a certification that does not clearly identify the translations it is certifying is not probative evidence that the certification relates to all of the translations in this record of proceeding. This type of deficiency in the certification results in the evidence accompanied by these translations to possess diminished value and are insufficient to demonstrate the validity of the foreign language materials. Nevertheless, as outlined below, even if the certificates of translation were completely properly, the Petitioner has not demonstrated that he qualifies for a national interest wavier based on the record presented. This issue should be addressed in any future filings by the Petitioner.

The Petitioner claimed eligibility for the EB-2 immigrant classification as an individual of advanced degree. However, because we conclude that he is not eligible for, and does not merit as a matter of discretion, a national interest waiver, and this determination is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of eligibility as an individual of advanced degree. *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).

A. Substantial Merit and 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. In determining

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

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

The Petitioner's proposal states that he will open an engineering consulting business that plans to "provide professional engineering and infrastructure consulting services to small and medium construction companies."[2] The evidence provided does not demonstrate that this specific endeavor is of national importance.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and 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. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the potential prospective impact of his work. 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. 26 I&N Dec. at 893.

Here, the Petitioner has not described how his consulting business will have a broader impact on the engineering field beyond his clients. The Petitioner argues that his proposed work is nationally important because it will "[s]upport, innovate and advise companies by introducing sustainable models" and "[h]ave a positive impact on both the environment and the economy." Yet the record does not explain how the business would impact the overall engineering field more broadly on the level of national importance. The brief describes how generally protecting the environment and small businesses "is paramount to protecting U.S. interests, growth, and sustainability." However, these arguments ignore the requirements we set forth in *Dhanasar*. It is not the importance of the field that determines an endeavor's national importance, but rather how the Petitioner's specific endeavor will impact the field on a level commensurate with national importance. *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not sufficiently illustrated what factors in his consulting business in particular would have a national impact on the engineering field.

[2] We observe that the initial petition explicitly stated the proposed endeavor was to provide "consulting services." Yet in the personal statement submitted in response to the RFE, the Petitioner additionally states that he will establish a "construction company." A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The inclusion of construction is a distinct addition from the initial proposed endeavor as it significantly expands the endeavor outside the original focus. As the *Dhanasar* framework requires an analysis of the substantial merit and national importance of the specific endeavor proposed by an individual, such an addition is material to his eligibility for a national interest waiver. Also, a petitioner must demonstrate eligibility requirements for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's proposal to additionally act as a construction company, submitted for the first time in response to the RFE, cannot establish eligibility as it was not presented in the original petition. Accordingly, we will only consider the proposed endeavor as described in the initial filing when conducting our analysis under the *Dhanasar* framework.

The record does not sufficiently demonstrate national importance either.[3] The Petitioner provided a number of articles and reports, a letter from an expert, recommendation letters, and client interest letters. These articles and reports are of little evidentiary value as they do not address the Petitioner's specific proposed endeavor or how it would have broad implications in the engineering field in a way that implicates national importance.[4] Moreover, though the letters of recommendation state that the Petitioner is a skilled engineer, they did not specify how the Petitioner's business will contribute to the engineering field on a nationally important level.

The Petitioner also provided a letter labeled as an independent expert advisory opinion from [redacted] As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nonetheless, 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 the advisory opinion is of little probative value as Ms. [redacted] letter mainly describes her past experiences with the Petitioner on different projects. The letter generally commends the Petitioner's past work experience and endorses his work. Nonetheless, beyond the general statement that he will "contribute significantly to the field of civil engineering" it does not provide an objective analysis of the proposed endeavor's potential national importance. From the evidence provided, the Petitioner has not established that his proposed endeavor will have a national impact on the engineering industry.

Moreover, he has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Dhanasar*, 26 I&N Dec. at 890. Here, however, the business plan does not adequately support the projections of job and revenue creation.

The Petitioner's business plan anticipates that the Petitioner's company will reach a total of 20 employees in year five, with payroll expenses growing from $355,000 in year one to $1,474,821 in year five. He also projected generating $43,505 in net profit in year one, increasing to $226,604 in year five. Nevertheless, the plan does not explain how these forecasts were calculated, or adequately clarify how these projections will be realized, nor does the record contain evidence to support the business plan's financial projections. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, the lack of supporting details detracts from the credibility and probative value of the business plan.

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

[4] We note that in response to the RFE, the Petitioner submitted several articles and a letter that originated after the filing of the petition. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(l), (12).

Even if we assumed all the projections in the business plan were accurate, the record lacks evidence demonstrating that its impact would be nationally important. The Petitioner's initial brief in support of the petition contends that his endeavor "will result in broad and significant economic...benefits". Yet the Petitioner did not provide documentation to support these statements. The record does not illustrate how creating 20 jobs and generating the net profit as projected in the business plan, would have substantial positive economic effects on the level of national importance. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has therefore not provided sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance. Accordingly, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that the Petitioner's proposed endeavor will sufficiently extend beyond his clients to affect the region or nation more broadly. 26 I&N Dec. at 893. He has not shown that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find 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.