U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30644111

Date: OCT. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Petitioner's eligibility for the requested 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 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. 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:

- 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 Director determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue on appeal is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

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

The Petitioner intends to work in the United States as a consultant to provide marketing and digital services to small and medium-sized businesses. Specifically, the Petitioner stated that he intended to "build on [his] extensive experience with marketing, digital innovation, and consulting in strategies projects to provide specialized consulting and advisory services in marketing and digital innovation" to small businesses owned by underserved populations. According to the record, he intends to target his services to "small entrepreneurs and small businesses[] with deficiencies in the use and implementation of technological tools" in order to "promote economic equity and level the playing field for [small and medium-sized businesses] that face major challenged and structural barrier to access and compete."

In support of this endeavor, the Petitioner submitted multiple personal statements detailing his background and plans for his work in the United States, letters of recommendation, employment verification letters, letters of interest from prospective U.S. employers, and several articles, fact sheets, and government publications discussing federal initiatives aimed at promoting and developing small and medium-sized businesses, and the impact of these businesses to regional and national economies, as well as articles discussing the importance of innovation and digital transformation for U.S. companies.

Upon review of the record, the Director concluded that, while the record showed the Petitioner's endeavor was substantially meritorious, the record did not establish the national importance of the endeavor because the prospective impact of his endeavor would not sufficiently extend beyond his

[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).

prospective employers or clients to lead to broader implications to his industry or field. Moreover, the Director determined that the Petitioner did not establish that his endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

On appeal, the Petitioner claims that the Director did not properly consider the evidence on record and showed a "misunderstanding and misapplication of [the] law that [went] beyond harmless error and reach[ed] the levels of abuse of discretion." As an example of this, the Petitioner highlights the Director's determination that he did not "offer[] any evidence to demonstrate" that his endeavor would result in broader impact at a level consistent with having national importance. According to the Petitioner, this conclusion shows the Director ignored "objective, documentary evidence," including his personal statements as well as several industry articles within the record that establishes "the national importance of [his] specific endeavor," and the "inherent benefits of promoting and supporting small disadvantaged businesses' access to marketing, technology, and digital tools." However, in their decision the Director did address the Petitioner's personal statements in the record. And, while the articles and reports in the record establish the substantial merit of his endeavor, they do not establish its national importance as contemplated in *Dhanasar*. The articles do not discuss the Petitioner's work or his proposed endeavor, but rather establish the importance of the consulting field and the use of digital tools in business promotion, as well as the governmental interest in small and medium-sized businesses. When considering the national importance of a proposed endeavor, the industry or customer base a petitioner will serve alone is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Accordingly, we are not persuaded by the Petitioner's claims that the Director ignored this evidence and agree with Director's conclusions that the Petitioner did not provide probative establishing the national importance of his endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 376 (confirming that a petitioner must support assertions with relevant, probative, and credible evidence).

The Petitioner also relies on *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994) to support his assertion that the Director erred in failing to consider all the evidence in its totality, claiming that "ample evidence" was provided that "clearly and unambiguously speaks to the national importance" of his endeavor. But the court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides reasoned consideration of the petition, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *See, e.g., Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention").

Turning to our review of the record, we agree with the Director that the evidence in the record, including the numerous industry articles and the Petitioner's endeavor has substantial merit, but the record does not establish, by a preponderance of the evidence, the proposed endeavor rises to the level of national importance contemplated under the *Dhanasar* framework. In *Dhanasar* we explained that when evaluating national importance, we "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." *Dhanasar* at 889. Here, the Petitioner has not shown the broader implications of his proposed endeavor, however admirable, rise to the level of national importance. On appeal, the Petitioner points to the industry articles establishing an imbalance regarding the use and effectiveness of digital products and the internet by small and medium-sized companies, asserting that his services will allow these companies "to survive and innovate, generating marketing and digital strategies that reinforce their development." He also claims that his consulting business will drive technology, business, job and economic growth in the United States. However, the record does not establish that his endeavor will meaningfully impact the industry he intends to serve, beyond his immediate customers. In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's clients, like the services the Petitioner intends to offer, would not have broader implications in the field. *Id.* at 893.

In *Dhanasar* we also said 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. On appeal, the Petitioner asserts the Director erroneously ignored the evidence and statements which established that the endeavor would generate important economic benefits for the country and significantly impact employment levels. However, the Petitioner has not supported this assertion with evidence that establish the economic impact of his *specific* endeavor, rather than relying on the industry and importance of small and medium-sized businesses in general. For example, in the record the Petitioner relies on the cumulative economic benefits of increasing the use of technological and digital solutions for small businesses, stating "the economic activity of all U.S. SMEs that deploy technology adds a total of $17.7 trillion contribution to the economy annually," but this does not explain the economic benefits that can be directly attributable to the Petitioner's work. While any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance contemplated in *Dhanasar*. Moreover, without sufficient information or evidence regarding a projected U.S. economic impact or job creation directly attributable to his endeavor, the record does not show that the benefits resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*.

And, while we acknowledge the Petitioner's statements that he intends to focus his operations in an economically distressed community designated as an opportunity zone by the Internal Revenue Services (IRS), he has not offered evidence to corroborate his claims that his business will in fact operate in an IRS opportunity zone, nor has he sufficiently explained and supported with documentary evidence how his employment of U.S. workers or his company's services would impact the area of intended operations.

We have also reviewed the personal statements and recommendation letters in the record that detail the Petitioner's expertise in the field and his ability to assist his customers, but we conclude that the evidence does not establish broader implications from his work. Moreover, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 890. The issue here is whether the

Petitioner has demonstrated the national importance of his proposed endeavor. We conclude that he has not.

Additionally, the Petitioner asserts on appeal that "it is not inherently necessary to meet each of the possible evidentiary examples provided in the precedent decision," yet the Petitioner has not established the national importance of his endeavor under any of the considerations discussed in *Dhanasar*. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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.