U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34508926

Date: OCT. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil 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 that the Petitioner was eligible for a national interest waiver of the job offer requirement. 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.

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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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.

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 whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Petitioner is a civil engineer who intends to develop an asphalt and paving consulting services firm based in Vermont. He notes that he will provide instruction and training to the labor force in the construction industry, with a particular focus on paving and asphalt, and will concentrate on best practices, sustainability, safety, and materials usage. He will also offer management consulting services to improve efficiency and profitability within construction firms.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, 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 national importance of the endeavor had not been demonstrated under prong one and that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that the Endeavor Has National Importance

On appeal, the Petitioner argues he has satisfied prong one of the *Dhanasar* framework.[2] He argues that the Director's denial "was made on the grounds of a serious misapplication of the regulations and laws governing the matter and an incorrect application of the standard of preponderance of the evidence." The Petitioner contends that the standard applied in denying the petition was significantly higher than preponderance of the evidence. In addition, the Petitioner argues that the Director inadequately considered the included job creation and economic impact projections and failed to fully consider the Petitioner's business plan. He argues that his endeavor has the "potential to transform the paving and infrastructure industry in the United States" and that the industry is currently dogged by labor shortages and lagging technology applications. His proposed endeavor will address this by "providing comprehensive training and advisory services to effectively tackle the labor shortage in the construction industry" and enhance professional competency, ultimately leading to better outcomes and project completions.

The Petitioner also contends that the Director's decision strayed from the requirements of the *Dhanasar* framework by conflating or heightening the listed considerations for national importance. The Petitioner argues that the Director erroneously required him to show that "the potential to create jobs will have a substantial positive economic effect in economically depressed areas." The Petitioner highlights that the *Dhanasar* decision instead outlines different avenues by which national importance can be demonstrated: either by having a significant potential to employ U.S. workers, or having other substantial positive effects, or by demonstrating such effects in an economically depressed area. The Petitioner also takes issue with the Director's indication that he be required to show the "potential to employ a significant number of U.S. workers" when the *Dhanasar* precedent lists a "significant potential to employ U.S. workers" as the relevant inquiry and does not focus on numbers. Finally, the Petitioner argues that the Director imposed a "high-bar" requirement that the U.S. government have an interest in the specific endeavor.

In support of these contentions, the Petitioner has submitted evidence including, but not limited to: a business plan detailing plans to provide training and consulting services over five years; letters of support; diplomas, transcripts, and certificates; employment history; an expert opinion regarding his eligibility for a national interest waiver; and articles providing context and background on the construction and paving industries and the impact of small businesses on the U.S. economy. The Petitioner stresses that the proposed endeavor is likely to be successful given his extensive educational and employment background and his intricate knowledge of paving work. He also stresses that his training and consulting will ease a crippling labor shortage and a technological lag in the construction industry.

The Petitioner has not satisfied the first prong of the *Dhanasar* framework requiring a proposed endeavor to be of national importance. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the proposed endeavor. In *Dhanasar*, we determined that the petitioner's

[2] The supporting brief and other documentation occasionally characterize this filing as a motion to reconsider; however, the Form I-290B, Notice of Appeal or Motion (appeal form) indicates that this is an appeal. We do not have jurisdiction over motions to reconsider decisions made by other offices. We have taken jurisdiction of the case as an appeal in accordance with the appeal form's notation.

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 the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact the construction industry, the paving industry, or otherwise impact economic initiatives more broadly at a level commensurate with national importance.[3] Furthermore, the Petitioner 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. Specifically, he has not shown that the company's future staffing levels, business activity, associated tax revenue, and financial initiatives stand to provide substantial economic benefits in Vermont or in the United States generally.

Although the evidence reflects the Petitioner's intention to provide valuable services for the trainees and business clients he will work with, his contentions regarding the broader impacts are insufficiently supported and attenuated from the actual endeavor. These listed benefits are not the direct consequence of the Petitioner's endeavor; rather, they rely on a series of assumptions that the training and consulting services being offered will cause changes in his client's profitability and operations, thereby occasioning cascading changes to the paving industry. However, the Petitioner has not provided us with sufficient evidence that his endeavor has the potential to be the catalyst for such nationally-important change. Similarly, while he discusses his technical abilities and the lack of innovation in the paving industry, he has not indicated that he will offer the type of "improved manufacturing processes" or similar implications, as highlighted by *Dhanasar*, that would cause national implications in the field. *Id.* at 889.

While the business plan outlines the intent to hire various employees and reach a particular revenue target, the support for these figures has not been provided; similarly, the Petitioner does not indicate how he calculated the expected number of courses to be given per month or the demand for these courses. Ultimately, the record does not demonstrate 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. Although the Petitioner has highlighted the importance of the paving industry to the economy, as well as the need for and impact from safe roadways that can be built profitably, he has not shown that the business services performed by the company would represent a significant share of the paving market or otherwise have a national impact.

Our determination that the proposed endeavor lacks national importance is made following a de novo of the record as a whole. For clarity, we will also address the Petitioner's arguments that the Director imposed novel requirements. In analyzing the evidence, the Director correctly noted that the listed supporting documentation, including federal government reports and communications highlighting infrastructure and road safety, did not reference the Petitioner's specific proposed endeavor. This was not error; throughout our precedent decision in *Dhanasar*, we noted that the analysis "focuses on the specific endeavor that the foreign national proposes to undertake" rather than the importance of the industry more broadly. *Id*. at 889. The Petitioner's argument that the Director required evidence beyond that in *Dhanasar* by demanding that "the potential to create jobs will have a substantial positive economic effect in economically depressed areas" is likewise unsupported. At the outset, we note that

[3] The Petitioner has provided, and we have reviewed, a substantial number of documents outlining the importance of small businesses to the national and global economy, as well as highlighting the impacts of the construction and paving industry. However, the *Dhanasar* framework instructs us to evaluate the impact of the specific proposed endeavor, rather than the field or industry generally. *Id.* at 889.

the quoted language does not appear in the Director's decision. Furthermore, the Director correctly analyzed the proposed endeavor's significant potential to employ U.S. workers and, separately, any other substantial positive economic effects.

Because the record does not establish the national importance of the proposed endeavor, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the third prong to qualify for a national interest waiver. *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because he has not met the 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.