U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34775177

Date: OCT. 24, 2024

Appeal of Nebraska 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 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 the record did not establish that 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 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. *Id.*

The record reflects that the Petitioner intends to work in the United States as a legal practitioner in the field of corporate governance with a particular focus on environmental, social, and governance (ESG)[2] matters. Initially, the Petitioner claimed that their "endeavor is focused on advocating the significance of companies' governance actions concerning ESG issues in the United States, advocating for the efficient use of America's resources, and crafting innovative frameworks for promoting welfare of American citizens." In response to the Director's request for evidence (RFE), requesting additional information relating to the proposed endeavor, the Petitioner clarified that they intended to work for a U.S.-based, global law firm to "apply [their] corporate legal expertise in ESG to develop innovative legal frameworks and guide corporations towards sustainable and responsible practices," with the goal of "enhance[ing] U.S. competitiveness, attract[ing] ethical investors, contribut[ing] to carbon footprint reduction, and promot[ing] long-term economic growth and social stability." The Petitioner asserted that their endeavor would contribute to climate change mitigation, economic growth and stability, social stability and ethical investing, and national security.

In support of their endeavor, the record contains multiple letters of recommendation, an expert opinion letter, several industry articles, reports, and government publications relating to ESG matters, climate-related financial reports, as well as governmental and consumer interest in promoting ESG initiatives. Additionally, the Petitioner provided articles relating to their employer's work in advising on ESG matters and information relating to their employment with the firm.[3]

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[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).

[2] The Petitioner defined ESG as a "framework that goes beyond financial considerations, helping stakeholders assess how companies manage risks and opportunities related to societal and environmental changes [with a] primary objective [] to create long-term value by prioritizing risk management and capitalizing on opportunities."

[3] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

Upon review of the record, the Director concluded that, while the Petitioner established the substantial merit of their endeavor, the record did not demonstrate the national importance of the proposed endeavor. Specifically, the Director concluded that the proposed endeavor was too vague to demonstrate its national importance, and did not establish the Petitioner's work as a corporate legal practitioner would result in broader implications to their field, beyond the benefits to their employer and prospective clients. While the Director acknowledged that the legal field and ESG initiatives are collectively important to the United States and its economy, the Director concluded that the Petitioner had not established how their *specific* endeavor would rise to the level of national importance contemplated in *Dhanasar*. Additionally, the Director concluded that the Petitioner had not shown that their proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

On appeal, the Petitioner generally disagrees with the Director's conclusions, asserting that their "legal framework directly addresses critical gaps in ESG compliance and reporting," and contends that the evidence in the record establishes their eligibility for the requested national interest waiver. The Petitioner also claims that the Director's determination that their endeavor is too vague is erroneous as the record establishes their specific endeavor will encompass three primary actions: applying their expertise in ESG to develop innovative legal frameworks; guiding corporations towards sustainable and responsible practices; and enhancing US competitiveness. Accordingly, the Petitioner claims that by addressing the critical gaps in ESG the endeavor contributes to national interests, ensuring the U.S. remains a leader in ethical business practices. The Petitioner also claims that the evidence in the record, primarily the research reports on ESG compliance and the critical role of corporate lawyers in addressing ESG compliance issues established the specific nature of their endeavor, as well as its broader implications.

Upon de novo review, we agree that, while the record establishes the substantial merit of the Petitioner's endeavor, the Petitioner has not established the proposed endeavor has national importance. The Petitioner's claims on appeal primarily rely on the importance of ESG and the corporate legal field in general, rather than the prospective impact of their *specific* endeavor. But in *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "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." *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.

Although the Petitioner's statements in the record reflect their intention to provide valuable legal services to their prospective clients, which they assert will be comprised of several Fortune 500 companies, the record does not establish that their work will result in broader implications to the field, beyond the potential benefits to their employer and clients. On appeal, the Petitioner points to the articles, industry reports, and government publications relating to ESG compliance, as well as evidence that their employer serves top financial and insurance companies to support their assertions. But these articles do not discuss the Petitioner's specific work, or otherwise establish how their work

will result in broader implications to the industry. Instead, this evidence supports the endeavor's substantial merit.

And, while the Petitioner claimed that, by helping their prospective clients navigate complex regulatory frameworks and prioritize ESG matters, their work will broadly impact national initiatives, including climate change mitigation, economic growth and stability, social stability and ethical investing, and national security, and public health, they do not explain or support with evidence how their specific work will meaningfully impact these initiatives. Their endeavor's alignment with federal initiatives may speak to the substantial merit of the endeavor, but it does not establish the specific endeavor's potential prospective impact. Instead, the record reflects that the prospective impact of the Petitioner's work will be limited to their employer and prospective clients. The Petitioner has not shown, for example, that any innovative legal frameworks they develop for their prospective clients would otherwise lead to broader implications to the field. And, because they have not described the innovative legal frameworks they intend to develop, we are unable to determine whether their work would result in improvements to the field analogous to the "improved manufacturing processes or medical advances" contemplated in *Dhanasar*. *Dhanasar* at 889. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). 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. *Dhanasar* at 893. Here too, we agree with the Director that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond their employer or clients to impact the field more broadly at a level commensurate with national importance.

Similarly, while we have reviewed the expert opinion letter in the record, we conclude it provides little probative value in establishing the national importance of the Petitioner's specific endeavor. For example, the letter from Ms. B-O-, which provides an opinion "on the significance of [e]nvironmental, [s]ocial, and [g]overnance (ESG) [p]ractices in the United States," does not establish the broader impact of the Petitioner's specific work, but rather focuses primarily on the importance of ESG practices and legal practitioners in general. For example, the writer states that the Petitioner's endeavor "aligns with broader national interests, including fostering economic growth, enhancing global competitiveness, and safeguarding public health and safety," but they do not identify ways in which the Petitioner's work will impact these initiatives at a level commensurate with national importance. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

The multiple letters of recommendation also do not establish that the prospective impact of the Petitioner's work will lead to broader implications to their field commensurate with national importance. While we recognize that the Petitioner has had a successful career, has participated in research on ESG matters while pursuing their education in the U.S., and has provided critical advice to former clients, 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." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor. We conclude that they have not.

On appeal, the Petitioner also asserts that the evidence submitted in response to the Director's RFE established that corporate practitioners, like the Petitioner, are in high demand to guide corporations in compliance with environmental sustainability standards, but this does not establish the national importance of their specific endeavor. The national interest waiver is not intended to address labor shortages. A demand for qualified professionals alone does not render the work of an individual legal practitioner nationally important under the *Dhanasar* precedent decision. Several of the Petitioner's claims of national importance could reasonably apply to any corporate legal practitioner in the field who has a positive impact on their client's operations, but Congress did not provide a blanket exemption for this occupation with respect to the job offer and labor certification requirement

We also agree with the Director's conclusion that the record does not establish that the Petitioner's endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See Dhanasar* at 890. Although the record discusses the collective economic impact of ESG compliance and sustainable practices, the Petitioner has not shown how their work would result in substantial economic benefits discussed in *Dhanasar*. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not shown that their endeavor will result in positive economic impacts at a level commensurate with national importance. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

Because the identified reason for dismissal 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 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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.