U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34867575

Date: OCT. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer and project manager, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or a person of exceptional ability, as well as a discretionary national interest waiver of the job offer requirement attached to this classification. 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 although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the 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 and thus labor certification requirements would benefit the United States. *Id.*

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

II. ANALYSIS

The Director found, and the record (including evidence of the Petitioner's U.S. bachelor and master of engineering degrees and related university transcripts) shows, that he qualifies for the underlying EB-2 classification as an advanced degree professional. 8 C.F.R. §§ 204.5(k)(1)-(2), (k)(3)(i)(A).

The remaining issue on appeal is whether he warrants a discretionary national interest waiver under the *Dhanasar* framework and its requisite three prongs, any one of which is dispositive. Under this framework, the first prong, "substantial merit" and "national importance," focuses on the specific endeavor the Petitioner proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education; and in assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*[2]

The Director ultimately determined that although the proposed endeavor has substantial merit and the Petitioner is well-positioned to advance his endeavor, the evidence did not show that it has national importance and thus he did not meet *Dhanasar*'s first prong.[3] On appeal, he does not submit any new evidence but clarifies his proposed endeavor and reiterates his eligibility for a national interest waiver. We conclude that the record does not establish that the proposed endeavor has national importance.

The Petitioner intends to continue to work as an electrical engineer and project manager in this country by engaging "in the engineering design, development and construction of renewable energy generation systems" that will improve efficiency and reliability in electricity and energy grid capacity.

Although the proposed endeavor as an electrical engineer and project manager in the field of renewable energy has merit, the evidence does not demonstrate that it would have significant potential to employ U.S. workers, have substantial positive economic impact in this country, broadly impact the industry on national or global level beyond his potential employer and customers, or otherwise have broader economic or societal implications rising to the level of national importance. *Id.* at 889-890.

In reasserting that his proposed endeavor has national importance, the Petitioner relies on his academic credentials and past experience as an electrical engineer and project manager as indicated in his resume, statements, prior job offer letters, support letters and general industry reports and articles on the significance of the industry. He further reiterates that, given his background, expertise, and demand for qualified individuals in the industry, which has been identified as a critical and emerging field by government agencies and other entities, his proposed endeavor will have substantial positive economic and societal impact. However, the referenced evidence and assertions focus on his skills and profession, which relate to *Dhanasar*'s second prong and pertain to whether he is well positioned for his endeavor and "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. For assessing the national importance of a proposed endeavor under *Dhanasar*'s first prong, we consider and look for evidence of the endeavor's "potential prospective impact" and evaluate whether the specific endeavor the Petitioner proposes to undertake has broader national significance, rather

[2] The Director found (in a request for evidence) that the Petitioner's vaguely defined proposed endeavor impedes *Dhanasar* evaluation. Considering his overall assertions and evidence, we conclude that it is sufficiently detailed and do not further address this issue here as *Dhanasar*'s national importance prong is dispositive of this appeal, as discussed below.

[3] The Director also determined that the evidence did not satisfy *Dhanasar*'s third prong.

than the importance of his profession or industry in which he proposes to engage. *Id.* at 889. Here, as an electrical engineer and project manager, he proposes to engage in designing and developing clean renewable energy systems that he claims will improve efficiency in energy capacity and quality of related systems in an environmentally sustainable manner. However, he does not specifically claim, and the record does not contain evidence, that he himself has developed or will develop novel systems that will broadly impact the industry in the United States. The record also does not contain sufficient evidence that his claimed engineering methods and managerial expertise he acquired through his past experience were or would be adopted by the industry here or otherwise have far-reaching implications. Although we acknowledge that the proposed endeavor could have a positive impact on his career, the Petitioner has not persuasively explained, and the record (primarily including his assertions, support letters, and the general industry reports and articles) does not demonstrate how his proposed endeavor to continue to work as an electrical engineer and project manager would have the national or global implications for the U.S. industry as he claims, beyond his potential employer and future clients.

For instance, the record lacks detail and probative evidence on the claimed economic impact and hiring potential, such as financial or employment projections, directly attributable to the proposed endeavor. The Petitioner also does not claim that he himself will employee U.S. workers or that his position with a company will result in hiring of U.S. workers. Further, he does not specify, and the record lacks evidence as to, how his proposed work otherwise stands to impact U.S. economy or benefit economically depressed areas. *Dhanasar*, 26 I&N Dec. at 890 (holding that proposed endeavors with "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area" may indicate national importance). Other than generally reiterating the importance of the renewable energy industry, which he claims will create construction and operation jobs in the field, and reasserting that his endeavor would also significantly benefit (unspecified) "rural and low income communities," the record lacks detailed, objective evidence as to how he will specifically facilitate and elevate the significance of his proposed work to a national level. Further, he does not delineate his future innovative development goals and how he will be able to achieve related goals he claims would provide significant benefits. The Petitioner's general assertions based on his background, support letters, and general industry reports therefore do not show that his proposed endeavor would have "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area." *Id.*

The Petitioner nonetheless continues to rely on his academic credentials, expertise, and the importance of the energy industry. However, as noted, the importance of a proposed endeavor is determined by its specific potential prospective impact, not by the occupation or industry, in which he proposes to engage based on his qualifications. *Id.* at 889-890. The purpose of the national interest waiver thus is not to facilitate a U.S. job search where there may be job opportunities. Anyone seeking this waiver must establish that "the specific endeavor" they propose to undertake has national importance. *Id.*

He also claims that his educational background and proposed endeavor fall within a science, technology, engineering, and mathematics ("STEM") field. But, here, the record does not contain persuasive explanation or specific evidence that being an electrical engineer and project manager with development goals in the stated subjects, whether in a STEM field, has broader implications, or it specifically furthers STEM objectives in a nationally significant manner, or otherwise show national importance as contemplated by *Dhanasar*. *Id.*; *see also* 6 *USCIS Policy Manual* F.5(D)(2),

https://www.uscis.gov/policymanual (stating that with respect to the first prong, *as in all cases*, the evidence still must show that a STEM endeavor has national importance).

While we acknowledge his desire to contribute to the U.S. renewable energy industry and its economy, he has not established with specific, probative evidence that his proposed endeavor will have broader implications in his field, have significant potential to employ U.S. workers, or have substantial economic or societal effects beyond his future employer and clients. He has not met *Dhanasar*'s national importance prong and thus has not established his eligibility for a national interest waiver. *Matter of Chawathe*, 25 I&N Dec. at 375-76 (stating that petitioners bear the burden of establishing their eligibility and under this standard we consider the quality, such as relevance and probative value, of the evidence, in addition to quantity); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

As the identified ground for denial, the Petitioner's inability to satisfy *Dhanasar*'s first prong is dispositive of this appeal, we do not address here the Director's determinations as to the second and third *Dhanasar* prongs for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.