U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 3454836

Date: OCT. 30, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an automobile manufacturer, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary 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 Petitioner did not demonstrate the Beneficiary merits a discretionary waiver of the job off requirement in the national interest. 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 beneficiary 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 demonstrates the beneficiary's 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 Beneficiary qualifies for the underlying EB-2 immigrant classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, would be in the national interest. Upon de novo review, we agree with the Director's conclusion that the Petitioner demonstrated the substantial merit of the Beneficiary's proposed endeavor, but did not establish its national importance under the first prong of the *Dhanasar* analytical framework.

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Beneficiary works for the Petitioner in the position of safety fields investigations global and joint venture single point of contact execution lead. In the initial filing, the Petitioner stated that in this role the Beneficiary intends to "advanc[e] critical and emerging technologies in the [t]ransportation [s]ector, with a specialty in [the automotive sector]." In response to the Director's request for evidence (RFE), requesting additional information relating to the specific endeavor, the Petitioner clarified the Beneficiary will "leverage his expertise to improve vehicle safety in the United States by working in critical and emerging processes" related to the company's safety field investigations. Additionally, the Petitioner explained that the Beneficiary's primary goal will be "to facilitate [safety] recall execution in multiple regions and assist in product investigations for safety of automotive vehicles." To do so, the Beneficiary will oversee the Petitioner's safety field investigation process "to ensure vehicle safety issues from all over the world are investigated by the appropriate region, ensure timely communication of recall decisions, comply with vehicle safety regulator authority [] filings and coordinate recall executions." The Petitioner also asserted that the Beneficiary's primary goal is to "design[] and implement virtual test environments for major parts of automotive development to ensure an expedited process and more control of safety issues . . . [his] role involves performing this assessment for [the Petitioner'] [s]afety [f]ield [i]nvestigations process, ensuring that the Petitioner's vehicles . . . undergo proper safety issue identification and investigation."

[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).

According to the Petitioner, the Beneficiary will ensure global coordination of safety field investigations and safety recalls of both the Petitioner's vehicles and vehicles that are designed and manufactured by the Petitioner's joint ventures abroad but sold and marketed as the Petitioner's vehicles in the United States. Additionally, he coordinates communication of the Petitioner's product recall decisions to all countries and serves as the single point of contact for any inquiries regarding global recalls or investigations of the Petitioner's automobiles. Accordingly, the Beneficiary will be charged with improving the Petitioner's internal investigation processes to manage and track investigations, recall executions, and communicate with their third-party joint ventures that distribute the Petitioner's vehicles.

To establish the national importance of the Beneficiary's endeavor, the Petitioner submitted multiple recommendation letters, an expert opinion letter, an organizational chart and overview of the Beneficiary's position within its company, several articles discussing the Petitioner's impact to the automotive industry and U.S. economy, as well as government publications and industry articles discussing critical and emerging technologies, the automotive industry, and prior automobile safety recalls, as well as documentation related to an infrastructure law aimed at improving the U.S. transportation sector.[2]

After review, the Director concluded that the record showed the Beneficiary's endeavor has substantial merit, but the Petitioner did not establish the endeavor was nationally important. Specifically, while acknowledging the impact of the Petitioner's operations and the importance of the safety recall industry, the Director determined that the Petitioner did not demonstrate that the broader implications of the Beneficiary's specific work would impact the industry at a level commensurate with national importance, or otherwise result in substantial economic effects contemplated in *Dhanasar*. *See Dhanasar* at 890.

On appeal, the Petitioner generally asserts that the Director did not properly consider the evidence, incorrectly applied relevant laws and regulations, and relied on factual errors in their analysis of the petition. As an example of this, the Petitioner contends that the Director's decision does not accurately describe the Beneficiary's endeavor, and claims that the Director implied that "no specific endeavor [was] defined, and that instead only a general 'field' and/or 'profession' was proposed," and the Director's reference to the Beneficiary's position title as his endeavor "fail[ed] to acknowledge the endeavor's specificity." Additionally, the Petitioner claims that the Director did not address or evaluate the evidence submitted in response to the RFE, which the Petitioner believes established the national importance of the endeavor. This evidence included a new letter from the Petitioner's director of safety field investigations (SFI) providing a detailed description of the Beneficiary's work within the company, an overview of the Beneficiary's position within the company, and evidence relating to the Petitioner's operations.

As a preliminary matter, we disagree with the Petitioner's contention that the Director's decision mischaracterized the proposed endeavor, specifically by referring to his intent "to work as a [s]afety [f]ields [i]nvestigations [g]lobal and [j]oint [v]enture." While the Petitioner relies on this statement to support their claim that the Director did not review the evidence detailing the Beneficiary's endeavor, including his goals and objectives, the Director's decision contains language explicitly referencing the Beneficiary's goals and objectives discussed in the record. And throughout the petition and on appeal,

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

the Petitioner states that the Beneficiary will work in the position of safety fields investigations global and joint venture. As such, the Petitioner has not shown how the Director's use of the Beneficiary's position title in referring to his endeavor has prejudiced the Petitioner as the Director's decision reflects that they considered the evidence discussing the nature of his endeavor specific endeavor. It is not enough to demonstrate errors in an agency's decision; the Petitioner must also establish that they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022). Similarly, the Petitioner's contention that the Director referred to the Beneficiary's endeavor as only a profession or field is unpersuasive. After acknowledging the endeavor as described in the record, the Director did not imply that the Petitioner only proposed a field or profession, but rather explained that, when determining national importance of an endeavor, the Petitioner must establish the importance and broader implications of Beneficiary's *specific* endeavor rather than the importance of their field or profession.

Turning to our review of the record, we agree with the Director that, while the Petitioner has established the substantial merit of the Beneficiary's endeavor, the record does not support the Petitioner's claims that the Beneficiary's endeavor will result in broader implications to the industry at a level commensurate with national importance. In *Dhanasar* we explained that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field such as those resulting from certain improved manufacturing processes or medical advances." *Dhanasar* at 889. Accordingly, we determined that teaching activities would not rise to the level of having national importance because they would generally not impact a field more broadly. *Id.* at 893. Here, we agree that the record establishes Beneficiary's proposed endeavor will support the Petitioner's operations, but does not show that his work will result in broader implications to the field or otherwise result in substantial positive economic effects commensurate with national importance.

On appeal, the Petitioner contends that the Director minimized the prospective impact of the Beneficiary's work given that their company "is the world's largest automotive manufacturing company, and directly created nearly one-quarter of the value of the U.S.'s entire auto manufacturing sector." Accordingly, the Petitioner asserts that the Beneficiary's work can "positively affect the lives of billions of their consumers across the global and help lead the way for a better, safer automotive experience for all." Additionally, the Petitioner's appellate brief contains considerable discussion regarding the importance of its operations to the automotive industry and the importance of its company's operations to the U.S. economy, noting that the "federal government has long recognized [its] pivotal importance . . . to the United States." Like the Director, we acknowledge the importance of the Petitioner's operations; however, the Petitioner cannot rely on its broader operations and impact to the United States alone to establish the importance of the Beneficiary's specific work. The Petitioner should show how the Beneficiary's *specific* work would result in broader implications to the industry at a level commensurate with national importance, or otherwise result in substantial positive economic effects.

The letters in the record indicate that the Beneficiary's endeavor could improve the Petitioner's safety field investigations processes, and improve coordination among their joint ventures, but the Petitioner has not explained how this work would lead to broader impact beyond the company's operations at a level commensurate with national importance. For example, they have not shown his work would

impact the broader automotive field or safety recall industry at a level commensurate with national importance. In particular one letter states that the Beneficiary was tasked with addressing communication issues between the Petitioner and its international joint ventures, leading to improvement in the investigation information-sharing processes, training materials, and investigation database reports, which resulted in a stronger relationship with the international joint venture. Additionally, the Petitioner explained that the Beneficiary has been tasked with establishing processes and points of contacts when the Petitioner launches a joint venture. This also included defining recall regulatory reporting, discussing emerging issues and reviewing critical process deliverables, communication, investigation and execution strategy. However, the Petitioner has not shown that by continuing to execute these duties the Beneficiary's work will result in broader implications outside of itself and its own business interests. The record does not establish, for example, how the Beneficiary's work would improve the recall safety industry or processes used in the industry more widely. While the letters in the record commend the Beneficiary for establishing internal procedures and processes that have helped the Petitioner ensure the safety of its vehicles, the record does not identify whether these processes would lead to national or global implications within his field commensurate with national importance, or could be analogous to the "medical advances" contemplated in *Dhanasar*. *See Dhanasar* at 889.

We have also reviewed the articles, industry reports, and government publications relating to the Petitioner's operations, the automotive industry and safety recalls, as well as the governmental interest in ensuring vehicle safety and recalls, and conclude that they do not establish the national importance of the Beneficiary's endeavor. The articles in the records do not discuss the Beneficiary's specific work, or otherwise establish how his work will result in broader implications to the industry. Instead, this evidence supports the endeavor's substantial merit.

Similarly, we conclude that the expert opinion letter provides little probative value in establishing the national importance of the Beneficiary's specific endeavor. For example, the expert opinion letter from Dr. H-D- focuses primarily on the importance of the Petitioner's operations and automotive engineering in general, rather that discussing the impact of the Beneficiary's specific work, concluding that it the automotive industry "the greatest facilitator of economic growth in the world." But the letter does not explain the broader implications of the Beneficiary's work. 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).

We also agree with the Director's conclusion that the record does not establish that the Beneficiary'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 economic impact of the automotive field, and the collective economic impact of the Petitioner's operations, they have not shown how the Beneficiary's specific work would result in substantial economic benefits discussed in *Dhanasar*, or described how the Beneficiary's specific work contributed to the company's economic impact. *Id.*

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

III. CONCLUSION

As the Petitioner has not met the first prong of the *Dhanasar* analytical framework, we conclude that it has not established the Beneficiary 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 their eligibility and appellate arguments under *Dhanasar*'s remaining 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.