U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34555197

Date: OCT. 31, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a petroleum engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 and the subsequent motion to reopen and reconsider, concluding the Petitioner had not established that eligibility for a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 the 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* at 889. Because the record reflects the proposed endeavor, developing a web education platform for the energy industry, falls within one or more of these areas, the Petitioner established the substantial merit aspect. However, while the Petitioner established that the proposed endeavor has substantial merit, the record does not show it has national importance.

The Petitioner intends to create a learning platform through his company, [redacted] that will educate the energy industry workforce so that those in the industry will be able to access courses of interest created by experts to assist in developing professional skills. In his initial business plan, he stated that he believes that [redacted] will "help empower the energy industry workforce, knowledge and attitudes to close skill gaps that will allow them to stay or enter the future labor market and progress in the professional and personal field." He explains that the proposed endeavor will "improve the education of the energy workforce of the U.S. through his startup of educational technologies aimed at the energy sector in the United States."

On appeal, the Petitioner asserts the Director erred in concluding that he did not establish the national importance of his endeavor, specifically that the Director's analysis of his teaching activities overlooked that the teaching activities are in EdTech and not in the traditional classroom. Relying on similar assertions made in the initial petition, the Petitioner contends that education start-up companies such as [redacted] are needed to attract new resources and develop the workforce. He maintains that the Director's analysis was flawed, and that he qualifies for the national interest waiver.

Upon de novo review of the record, we agree with the Director's evaluation of the evidence, and conclude it does not establish that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework. The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

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.* Although the Petitioner did detail the business model for his startup educational technology company, he did not demonstrate how his educational platform would largely influence the field and rise to the level of national importance. The record does not show through supporting documentation how the online educational platform sufficiently extends beyond his prospective students to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Although the Petitioner contends that he submitted many probative reports on the importance of various national and government initiatives in STEM education, such as "Biden-Harris Administration Actions to Attract STEM Talent and Strengthen our Economy and Competitiveness", "Building a Stronger Infrastructure and Clean Energy Workforce,", "This Map Reveals Clean Energy Jobs Now Outnumber Fossil-Fuel Ones," and "Global EdTech Market – Outlook & Forecast 2023-2028", the matter here is not whether these initiatives, as well as the topics of education platforms and jobs in the energy sector or similarly related subjects, are nationally important. Rather, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing web learning platforms to the energy workforce. Here the Petitioner relies on articles regarding the importance of education and the energy industry in general but fails to show how his proposed endeavor will reach prospective students and in turn impact the energy field at a level commensurate with national importance.

The Petitioner's statements and business plan reflect his intention to provide valuable educational services to individuals in the energy field, but he has not provided sufficient information and evidence to demonstrate that the prospective impact of the proposed endeavor rises to the level of national importance. For example, in his business plan the Petitioner asserts that his company will provide "courses developed by experts in the sector and will be grouped into topicals according to competences to be developed (skills, knowledge and attitudes)" On appeal he explains further that, [redacted] educational content grouped based on a taxonomy that allows users to acquire the necessary skills to fill the jobs.", but he does not provide further explanation of his innovative teaching methodology such that it can be considered to extend beyond the individual students. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 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 the business plan submitted with the initial filing, the Petitioner contends that his endeavor can mitigate the changes in the energy industry as employment shifts from the fossil to the clean energy fields, and that the United States is experiencing a shortage and a need for re-training in the solar, wind and electric vehicle subsector However, the alleged shortage of occupations or occupational skills does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process

Finally, in the financial impact section of the business plan for the proposed company, the plan lacked supporting evidence to corroborate the assertions and figures. Moreover, the Petitioner did not demonstrate how the business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offer substantial positive

economic effects for our nation. Although the plan forecasts revenue from $440K in year 1 to $53M in year 5, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 890.

For all these reasons, the record does not demonstrate that, beyond the benefits provided to prospective students, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, and therefore 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 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.