U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33359060

Date: SEP. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical 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'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.

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 Director determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

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 Petitioner initially indicated that he intended to use his "expertise and knowledge working as an [e]lectrical [e]ngineer in the United States," so that he could "benefit U.S. companies looking to innovate their performance and technologies." Given his experience with electromagnetic compatibility (EMC) and electromagnetic interference (EMI) testing, the Petitioner asserted he would ensure "correct functionality of airplanes and other vehicles or devices," and help airline manufacturers improve safety features to address EMI. In his professional plan, he provided a summary of his experience working as an electrical engineer in the aviation industry particularly on EMI/EMC testing, including lightning and high-intensity radiation field (HIRF) testing in avionic systems. Ultimately, the Petitioner asserted that, based on his experience and knowledge in the aviation industry, he will be able to work with U.S. companies to "improve technologies, optimize investments, and help create new ideas and designs in the field . . . [and] will focus on innovating in different aspects of [e]lectrical [e]ngineering, mostly in aircrafts."

In response to the Director's request for evidence requesting a more detailed description of the proposed endeavor, the Petitioner's asserted he would specifically "work in the U[nited [S]tates as an electromagnetic environment effect engineer specializing in research, testing, and developing new technologies," adding that he would "primarily focus on the [a]ircraft industry, leveraging his sound experience in the field." According to the Petitioner, electromagnetic environmental effect "is a highly specialized subject matter [that] cover[s] all aspects of electromagnetic engineering," and allows companies to "mitigate risks such as equipment failures and losses, reduction of costs, actions to avoid damages to infrastructure, and undue injuries and tragic fatalities."

[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).

In support of this endeavor, the record contains a professional plan, two expert opinion letters, and several articles, government publications, and executive orders discussing various topics including the electrical engineering field, the growing demand for electrical engineers and aerospace engineers, and multiple federal initiatives aimed at increasing STEM professionals in the United States, furthering the development of critical and emerging technologies, and advancing biotechnology and biomanufacturing in the United States. Additionally, the Petitioner submitted letters of recommendation from former colleagues and others in the field, as well as evidence of his involvement in securing a U.S. patent for his former employer on the creation of a lightening protection system for aircrafts.[2]

Upon review of the complete record, the Director determined that the Petitioner had not established the national importance of his endeavor because the record did not show his work would result in broader implications to his field, beyond the benefit to his prospective employers. Moreover, the Director determined that the Petitioner did not establish that his endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

On appeal, the Petitioner asserts general disagreement with the Director's decision, and requests a de novo review of the record. Notably, however, the Petitioner does not point to specific examples of how the Director erred in their analysis or otherwise provide examples of why the Director's decision is incorrect. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding.[3] By presenting only general disagreement with the Director's decision, without identifying the specific aspects of the denial he considers to be incorrect, the Petitioner has failed to sufficiently identify the basis for his appeal.[4] This alone is grounds for dismissal. Nevertheless, we have reviewed the record and agree with the Director that the Petitioner has not established the national importance of his endeavor under the first prong of the *Dhanasar* framework.

Upon a de novo review of the record, we conclude that, while the articles and reports in the record including multiple government reports discussing the U.S. government's interest in STEM fields establish the substantial merit of the Petitioner's endeavor, the record does not establish its national importance. 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.

The Petitioner claims on appeal that his endeavor will have national implications to the field because his work will result in enhanced safety standards, technological advancements, economic growth and

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.
[3] *See* 8 C.F.R. § 103.3(a)(1)(v).
[4] *Matter of Valencia*, 19 I&N Dec. 354, 354–55 (BIA 1986).

competitiveness, and national security. In addition, he asserts that his endeavor will result in substantial positive economic effects because his work will address flight delays thereby avoiding substantial costs to airlines, passengers, and the economy. Moreover, the Petitioner claims his endeavor will broadly enhance societal welfare through improved aviation safety, environmental benefits, economic growth, enhanced global connectivity, technological innovation, and national security. Yet, in making these assertions, the Petitioner has not identified ways in which his *specific endeavor* will result in these broad benefits, but rather continues to rely on the collective importance of his field. For example, the Petitioner asserts that "[e]lectromagnetic [c]ompatibility (EMC) stands as a cornerstone in the realm of aviation, ensuring the safe and reliable operation of aircraft systems amidst the complex electromagnetic environment they navigate," yet he does not explain how the individual work he may perform, like performing EMC/EMI testing and analysis, HIRF testing, and developing lighting protection solutions for his employers will meaningfully impact the field at a level commensurate with national importance.

And while we acknowledge the Petitioner's reference to USCIS policy recognizing the importance of STEM fields and role of persons with advanced STEM degrees in fostering progress in technological advancements,[5] the Petitioner has not shown that his endeavor will foster progress in STEM technologies or result in broader implications to his field. The Petitioner claims on appeal that his work will have wider implications for technological advancements and enhancements to airplane safety, but he does not provide support or explanation explaining how his work will result in these advancements or otherwise result in broader implications, rather than providing services to his prospective employers. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. We agree with the Director that the record establishes the importance of his field and the cumulative impact of engineers in his field, but he has not shown how his individual contribution would result in broader implications to the field. Moreover, while the Petitioner asserted his intent to train other professionals in his field, he did not establish that any training he would provide, while certainly beneficial to his prospective trainees, would result in broader implications to the field. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. By extension activities which only benefit a small subset of individuals and companies, like the Petitioner's proposed endeavor, would not rise to a level of national importance.

Similarly, on appeal the Petitioner continues to rely on his professional experience and background to assert the national importance of his endeavor. We recognize the Petitioner's extensive experience in the field, as well as his involvement in securing a patent for his former employer, but 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.

The testimonial evidence in the record, including the two expert opinion letters and the letters of recommendation, also provide little probative value in establishing the national importance of the Petitioner's endeavor. For instance, in the expert opinion letter from while Dr. A-A-, they focus primarily on the Petitioner's background as well as the importance of the electrical engineering field to establish the national importance, concluding that he would provide benefits to U.S. businesses, but

[5] 6 *USCIS Policy Manual*, F.5(D)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

Dr. A-A- did not provide explain how these benefits and his work would broadly impact the field. Likewise, in the opinion letter from C-R-, the broader implications of the Petitioner's endeavor are not addressed, rather the letter only provides general information about the importance of electromagnetic effects engineering. 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). Here, much of the content of the expert opinion letters and the recommendation letters lack probative value with respect to the national importance of the Petitioner's specific endeavor.

The record also 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. While the Petitioner asserts that his work will minimize flight delays and disruptions which will ultimately result in cost savings and foster economic growth and job creation, he supports this assertion by relying on the cumulative economic benefits of improved flight safety rather than his individual endeavor. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not provided projected employment numbers and revenue growth contributable to his specific endeavor to establish how his endeavor will result in substantial economic benefits discussed in *Dhanasar*. *Id.*

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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, 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 and appellate arguments 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.