U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33949506

Date: SEP. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a petroleum 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. The Director did not address whether the Petitioner qualifies for second preference classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. However, the Director concluded that the Petitioner had not established that 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 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.

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 (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.

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. *Id.* at 889. *See id.* at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director did not specify in the decision whether the Petitioner qualifies for classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. *See* section 203(b)(2) of the Act. However, in a prior request for evidence (RFE), the Director specifically advised the Petitioner that the record does not establish he qualifies as a member of the professions holding an advanced degree. *See id.* The record does not clarify why the Director addressed whether the Petitioner may qualify for a national interest waiver if he was ineligible for second-preference classification, as the Director indicated in the RFE.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* section 203(b)(2) of the Act; *see also INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

The Petitioner did not initially specify what the proposed endeavor would be. Instead, he stated, "Considering my professional plan in the United States, I have carefully evaluated several alternatives," which he described as possibly "opening an LLC for [e]ngineering and [c]onsulting services in the oil and gas upstream sector," "offer[ing] my assistance . . . addressing the urgent issue of unplugged oil and gas wells," and potential "strategic partnerships" with various individuals. The Petitioner also mentioned, in passing, "I propose a PhD research study focused on identifying effective strategies for carbon footprint reduction in oil field development," without further elaboration.

[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 response to the Director's RFE, the Petitioner submitted a business plan that indicates he proposes to co-found a company that "will provide strategic consulting to optimize and enhance operations in the oil and gas industry fostering efficiency and addressing challenges such as emissions reduction and sustainability." The business plan indicates that the oil and gas industry consulting company will be headquartered in [redacted] Texas, and that its "target customers" will include "oil and gas production companies, banks, and private investors." The business plan states that the oil and gas industry consulting company will "provid[e] clients with a strategic edge in navigating the dynamic industry landscape" and "play a pivotal role in guiding clients on the integration of new technologies into the oil and gas sector," ensuring "that clients remain at the forefront of industry advancements." The business plan indicates that the Petitioner's company will employ himself as both its general director and "reservoir engineering expert," hiring one director of business development and one consultant in the first year of operations, one additional consultant for each additional year of operations through the fifth year of operations, and a "Financial Manager/HR Specialist" in the second year of operations, for a total of eight workers. The business plan asserts that its headquarters will be located "in an economically distressed area within Texas," although it does not establish which particular area within the [redacted] Texas, metropolitan area the company will be located. We further note that the business plan primarily consists of information unrelated to a plan for operating a business, such as the Petitioner's prior work experience and generalized information regarding the oil and gas industry and commerce.

As noted above, the Director concluded that the record does not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, the Director acknowledged the "letter, a business plan, articles, statistics, and information on small to medium sized businesses" the Petitioner submitted. However, the Director observed that "the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his customers to impact his field or the U.S. economy more broadly at a level commensurate with national importance." The Director explained, "As demonstrated on your business plan, the business consists of business to business transactions, thus, it will only benefit and limit profit to the businesses in the transaction." The Director also noted that "the Petitioner has not offered sufficient evidence that the areas of consideration are economically depressed, that he would employ a significant workforce in that area, or that his project would offer the city or its population a substantial economic benefit through either its employment level or virtual product services." The Director further concluded that the record does not establish that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and that it does not satisfy the second and third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner asserts that the business plan he submitted in response to the Director's RFE, generalized information in the record regarding the oil and gas industry, and a recommendation letter establish the proposed endeavor has national importance. The Petitioner also asserts that he "positions his future company as qualified for the classification of STEM and [e]ntrepreneurship," without elaborating on how that relates to whether the proposed endeavor may have national importance.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889.

Dhanasar provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the generalized information in the record regarding the oil and gas industry that the Petitioner references on appeal does not address the Petitioner, the specific endeavor that he proposes to undertake, and how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance. *See id.* Therefore, the generalized information in the record regarding the oil and gas industry that the Petitioner references on appeal is immaterial to determining whether the proposed endeavor may have national importance. Relatedly, the recommendation letter the Petitioner quotes on appeal, written by a professor of mechanical engineering at [redacted] largely provides similar generalized information. It addresses the Petitioner's qualifications, which are material to whether an individual may be well positioned to advance a proposed endeavor, contemplated by the second *Dhanasar* prong, but it does not provide probative information about how the specific endeavor the Petitioner proposes to undertake may have the type of national or even global implications, such as those resulting from improved manufacturing processes, significant potential to employ U.S. workers, or other substantial positive economic effects. *See id.*

We next note that the Petitioner does not articulate on appeal how the fact that "[r]esevoir engineering belongs to . . . science, technology, engineering, and mathematics (STEM)" may establish that the specific endeavor the Petitioner proposes to undertake may have national importance. As explained above, the relevant question for determining national importance is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the specific endeavor that the individual proposes to undertake and we consider its potential prospective impact, looking for broader implications. *See id.* at 889. Thus, the relevant question for determining national importance is not whether the specific endeavor the Petitioner proposes to undertake is within the field of engineering; rather, the relevant question is whether the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance, such as national or even global implications within the field of engineering or any other particular field. *See id.*

The record, particularly in the business plan the Petitioner submitted, establishes that the proposed endeavor will benefit certain clients who receive the Petitioner's oil and gas industry consulting company's services. For example, as noted above, the business plan asserts that the oil and gas industry consulting company will "provid[e] clients with a strategic edge in navigating the dynamic industry landscape" and "play a pivotal role in guiding clients on the integration of new technologies into the oil and gas sector," ensuring "that clients remain at the forefront of industry advancements." However, the record does not establish how the specific endeavor the Petitioner proposes to undertake may benefit "oil and gas production companies, banks, and private investors" that are not clients of the Petitioner's oil and gas industry consulting company, let alone entities and individuals in the [redacted] Texas, metropolitan area—or any other area—that are not "oil and gas production companies, banks, and private investors." On the contrary, the business plan's discussion of the benefits provided to the oil and gas industry consulting company's clients implies that the specific

endeavor the Petitioner proposes to undertake will be detrimental to non-clients that would not benefit from the "strategic edge" the consulting company would provide to its clients.

Even to the extent that the specific endeavor the Petitioner proposes to undertake may offer benefits, albeit to clients and to the exclusion of non-clients, the record does not establish how the Petitioner's oil and gas industry consulting company may have national or even global implications within the field of engineering, oil and gas drilling and refinement, or any other particular field, such as those resulting from certain improved manufacturing processes. *See id.* at 889-90.

Although the business plan asserts that its headquarters will be located "in an economically distressed area within [redacted] Texas," we take administrative notice that only certain areas within the [redacted] Texas, metropolitan area are economically distressed, and the business plan does not establish which particular area within the [redacted] Texas, metropolitan area the company will be located. Therefore, it does not establish that whatever positive economic effects the proposed endeavor may somehow offer to non-clients would be in an economically depressed area. In turn, although the business plan indicates that the Petitioner's gas and oil industry consulting company intends to employ eight workers, including the Petitioner, within the first five years of operations, the record does not establish how one additional oil and gas industry consulting company in the [redacted] Texas, metropolitan area, employing eight total workers, demonstrates a significant potential to employ U.S. workers or other substantial positive economic effects. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong, and whether the proposed endeavor has substantial merit. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.