U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32868321

Date: SEP. 20, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur with experience in power engineering and process automation, 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 Nebraska Service Center denied the Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner established his underlying eligibility for EB-2 classification as an advanced degree professional, but that he did not establish he merited a national interest waiver. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. 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. 8 C.F.R. § 204.5(k)(2).

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 is an advanced degree professional and therefore qualifies for the underlying EB-2 visa classification.[2] Thus, the only issue on appeal to be determined is whether the Petitioner qualifies for a national interest waiver.

The Petitioner is an engineer, project manager, and business owner who proposes to continue operating a company in the United States to improve the energy efficiency of residential and commercial buildings and the safety of housing. The Director concluded that the Petitioner's proposed endeavor had substantial merit and that he was well positioned to advance his proposed endeavor under the *Dhanasar* analytical framework for a national interest waiver. However, the Director denied the national interest waiver, concluding that the Petitioner had not established that his proposed endeavor was nationally important, and that on balance, waiving the job offer requirement would benefit the United States as required under the first and third *Dhanasar* prongs. *See id.* On appeal, the Petitioner claims the Director erred in its conclusion, and that he meets all three of the *Dhanasar* prongs and merits a national interest waiver. For the reasons discussed below, we find that the Petitioner has not established eligibility for a national interest waiver under the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, regarding 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. *Id.* In determining whether the proposed endeavor has national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we consider the proposed endeavor's "potential prospective impact," and "look for broader implications." *Id.* For instance, "[a]n undertaking may have national

[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).

[2] Our review of the record reflects that the Petitioner submitted English language translations of his diploma and academic record but did not submit copies of the original documents in Russian to support the Director's determination. We need not reach whether the Petitioner established he is an advanced degree professional, however, as our decision on his eligibility for a national interest waiver is dispositive. The Petitioner must submit copies of the original documents or address the deficiency in any future filings to establish his underlying eligibility.

importance for example, because it has national or even global implications within a particular field." *Id.* Further, "[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. As noted above, the Director concluded the Petitioner's proposed endeavor had substantial merit. We agree. However, we also agree with the Director's conclusion that the proposed endeavor was not nationally important.

The Petitioner provided a personal statement in support of his Form I-140 wherein he described his educational and professional background, including his creation of his own company in the United States. He claimed that his company improves the energy efficiency of residential and commercial buildings by reducing energy consumption of utility systems, increasing energy efficiency of air conditioning systems, and by insulating and shielding external structures. He further claimed the company improves the safety of housing by eliminating sources of bacterial and fungal contamination, defining fire safety standards, and increasing the safety of combustion product removal systems. He explained that in the future he intended to expand the range of services his company would offer in the field of energy efficiency in residential buildings. While the company initially is operating in New York and New Jersey, he stated the company would eventually expand into all major cities in New England as well as southern and central states. He claimed that his proposed endeavor is nationally important in part because U.S. households are low in energy efficiency which results in energy waste and that his company will increase energy efficiency in residential and commercial buildings. He stated that the services his company offers will thus help people save money on energy bills and improve their quality of life in their homes, as well as potentially create jobs in a variety of industries which could stimulate economic growth across the country. Finally, he claims that improving energy efficiency can help reduce greenhouse gas emissions and mitigate the effects of climate change.

The Petitioner also provided a business plan wherein he provided a market analysis for his company, a personnel plan, and described the services his company would provide and the need for those services in the United States. In the business plan, he claimed his company will have a substantial national impact on the U.S. economy and society. Initially he explained that his company will reduce energy consumption in buildings that will lead to lower energy costs and a decrease in emissions. He further explained that the company will help drive job growth and thus contribute to the overall health and diversity of the U.S. economy. The Petitioner indicated his business intends to employ up to three employees in the first year of operation, and by year five of operations, claims his company will have created 30 jobs.

Additionally, the Petitioner submitted letters of recommendation and industry articles. These submissions generally speak to the Petitioner's character and professional experience and/or the overall importance of heating, ventilation, and air conditioning (HVAC) systems, and energy efficiency in the United States.

We acknowledge the above evidence which primarily describes the Petitioner's experience in the field of HVAC systems, the overall impact the HVAC industry has on the economy of the United States, or the importance of improving energy efficiency. Our focus in assessing national importance, however, is on the specific endeavor that the Petitioner proposes to undertake and its prospective impact, rather than his credentials and experience or the importance of the industry or profession in which the individual will work. *Id.* at 889.

Here, the Petitioner has not offered sufficient information and evidence to demonstrate that the services he intends to provide through his company as part of this endeavor have broader implications, beyond his own business and clients, that are at a level commensurate with national importance. Specifically, he does not sufficiently explain or demonstrate how the specific services he proposes to provide offer original innovations to advance, or otherwise have national or global implications in, the field of HVAC and energy efficiency. Additionally, the Petitioner's general assertions regarding the contributions his services will make to the national economy through job growth, or the impact such services will have on emissions reductions, are not supported by corroborating evidence and are therefore insufficient to demonstrate his proposed endeavor is nationally important. Finally, even if we were to conclude that the financial projections in the business plan regarding revenue growth and job creation are well founded, which we do not, the Petitioner did not establish that his endeavor's potential to employ U.S. workers is significant, that the revenue or number of jobs created by his proposed endeavor would otherwise result in *substantial* positive economic effects, or that his business would be in an economically depressed area.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, requiring that he demonstrate his proposed endeavor is nationally important. He therefore has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

As noted above, the Director also concluded that the Petitioner did not establish that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification, as is required under prong three of the *Dhanasar* analytical framework. While the Petitioner also contests this conclusion on appeal, since our determination that the Petitioner did not establish that his proposed endeavor is nationally important is dispositive of his appeal, we decline to reach and hereby reserve the appellate argument on this issue. *See 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"); *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.