U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33942437

Date: SEP. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer/technician, 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 had established eligibility for a 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.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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,[2] 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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". *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner stated on the Form I-140, Immigrant Petition for Alien Workers, that his occupation is as an electrical engineer and that he intended to research, design, develop, test, or supervise the manufacturing and installation of electrical equipment, components, or systems for commercial, industrial, military, or scientific use. In a business plan submitted with the petition, the Petitioner described his endeavor as a new engineering consulting services company providing electrical engineering, electronics, and production processes to other companies and residential customers in the United States. He projected $367,000 in gross revenue within a year and $500,000 in three years, when it would support a full-time staff of four. He contended that his company would positively impact the national interest by contributing to manufacturing quality and efficiency, supporting industrial sector growth, and promoting job creation. The Petitioner asserted that because manufacturers in the United States accounted for 12% of the national economic output and employed approximately 8.51% of the national workforce, his company would improve efficiency and production quality in this sector. The record also includes the Petitioner's resume, support letters from professional associates, reports and articles regarding electrical engineering, manufacturing process information, small businesses, reverse logistics, and electrical safety and maintenance.

[2] *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 denying the petition, the Director determined that although the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the Petitioner's specific proposed endeavor rose to the level of national importance. Specifically, the Petitioner had not shown that his endeavor had substantial positive national economic effects, such as by employing a significant population of workers. The Director further determined that the Petitioner had not shown that providing his expertise as an electrician had national or global implications beyond the impact on his company and its customers. Upon de novo review, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor would have national importance.

On appeal, the Petitioner submits a brief asserting his eligibility for the national interest waiver, including that his proposed endeavor is of national importance, and copies of previously-submitted evidence. First, he contends that the Director erroneously emphasized the lack of geographical breadth of his endeavor and the number of potential employees as absolute criteria for national importance instead of looking to the endeavor's potential impact, even if that impact is limited to one geographical area. He argues that there is "an established list that USCIS has included as requirement [sic] to the national importance criteria". The Petitioner asserts further that the Director did not consider other criteria, specifically "national initiative," for establishing national importance and asserts that the Director did not properly weigh evidence and consider facts.

The Petitioner is correct that he is not required to show the impact of his proposed endeavor in solely geographic terms. "[N]ational or even global implications within a particular field" are merely one indicator of national importance. *Id* at 890. As stated above, the key focus of the national importance element is an endeavor's "broader implications," which may be demonstrated even if that endeavor focuses on one geographic area. *Id*. In other words, as stated in *Dhanasar*, we do not focus on "the geographic breadth of the endeavor," but rather the breadth of an endeavor's implications. *Id* at 890. Likewise, an endeavor's "significant potential to employ U.S. workers" or its potential for "other substantial positive economic effects" are also indicators of national importance, but like the national or global implications characteristic, these are not requirements under the *Dhanasar* framework. *Id.* However, in the instant case, we conclude that the Director correctly determined that the breadth of implications of the Petitioner's endeavor is limited to the Petitioner, his company, his prospective clients, and his four prospective employees according to the *Dhanasar* framework. The Petitioner has not demonstrated on appeal that the Director imposed improper requirements in this regard. Despite the Petitioner's reference, there is no "national initiative" criterion for a national interest waiver. Likewise, the Petitioner has not explained the contents or establish the existence a "list" of requirements that the Director purportedly did not consider.

Next, the Petitioner emphasizes on appeal the scope of the electrical engineering field and the importance of regular electrical maintenance in preventing failures such as fires. As previously noted, the Petitioner's endeavor was found to have substantial merit. But notwithstanding the general importance of the electrical engineering field, the Petitioner's reliance on the goals his endeavor seeks to address is misplaced. The relevant question in determining national importance is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id*, at 889. In *Dhanasar*, we determined that the petitioner's teaching activities, even in a field with substantial merit in relation

to U.S. educational interests, did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Accordingly, merely working in an important field is insufficient to establish the national importance of the proposed endeavor without evidence documenting the "potential prospective impact" of a petitioner's work. While the Petitioner argues that his proposed endeavor rises to the level of national importance because it would improve societal welfare and increase the U.S. economy, he has not supported these claims with corroborating evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376 (assertions must be supported with relevant, probative and credible evidence). The industry reports and articles in the record emphasize the general importance of electrical engineering, while the support letters discuss the Petitioner's professional background and accomplishments. The submitted documentation does not demonstrate a potential impact on the field of electrical engineering such that the Petitioner's specific endeavor would rise to the level of national importance.

Lastly, the Petitioner makes several claims that the denial of his petition was procedurally incorrect. In doing so, he states that the Director "has not implemented the right policy" and applied "the wrong standard without notice". Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. Although the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for the national interest waiver, he does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying this petition. He additionally contends that he "not given clear instructions to address these issues as required by regulations, but did not elaborate how the Director's denial did not comply with 8 C.F.R. § 103.2(b)(8)(iv) as he claims.[3] Furthermore, despite the Petitioner's argument, the Director did issue a request for evidence prior to denying the petition, which provided adequate notice regarding the deficiencies in the petition.

In conclusion, we determine that the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015). The petition will remain denied.

ORDER: The appeal is dismissed.

[3] Although 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue a request for evidence, neither the Act nor the regulations compel us to do so.