U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33943179

Date: SEP. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 although the Petitioner is an advanced degree professional, he did not establish 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." *Id.*

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 a 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

The Petitioner filed this petition on July 25, 2023. At the time of filing, the Petitioner was an associate professor at [redacted] and an engineering director for a company in [redacted] Egypt where he supervised and conducted consultation jobs in the following areas: firefighting, HVAC, piping stress analysis, finite element analysis, vibration analysis and fault diagnosis, and hydraulic pipeline design. After analyzing the initial evidence, the Director issued a request for evidence (RFE), noting the deficiencies in the record, to which the Petitioner timely responded. The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree based on his doctorate degree in aerospace engineering from [redacted] in Virginia. We agree with the Director's determination. The issue on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, we will analyze the Petitioner's evidence under prong one and, as explained below, because he has not established his eligibility under that prong, we decline to reach and hereby reserve the Petitioner's arguments regarding the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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).

A. Prong One of the *Dhanasar* Framework

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.* As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

Initially, the Petitioner described his proposed endeavor as pursuing a staff research and development mechanical engineer position for a company, like [redacted] which manufacturers belt fasteners, belt cleaning products, and tools for the mining industry.[2] He explained that he intends to contribute to maximizing belt conveyor productivity and setting the highest standards for designs, safety of installation, and reliability. In his RFE response, the Petitioner described that his endeavor includes continuing research and product development in the fields of material handling and renewable energy. In the field of material handling, the Petitioner explained that he intends to design and develop new equipment for belts to improve engineering processes and create more efficient machinery, which he asserts will extend the life of this equipment and increase profits for the industries that rely on these products including mines, assembly factories, food processing factories and airports. In the field of renewable energy, the Petitioner asserted he plans "to continue [his] work in designing new novel blades for wind turbines and new geometrics for wave chambers used for wave energy extraction." The Petitioner also discussed his ongoing research plans, which include continuing the following: 1) an electric car project (for which he secured $550,000 in funding); and 2) converting a diesel bus to electric bus (for which he secured $580,000 in funding). Lastly, he reasserted that he will pursue a position as a mechanical engineer, where he will use his "extensive experience with finite element modeling, computational fluid dynamics, fluid structure interactions, heat transfer, data acquisition, and mathematical optimization," and circulate his work through peer-reviewed publications, and patents.

The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, at the time the petition is filed. 8 C.F.R. § 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Here, the Petitioner's RFE response included an additional new endeavor related to renewable energy, which constitutes a material change in his proposed endeavor. As such, we will only consider his original proposed endeavor.

On the Form I-140, the Petitioner describes his occupation as mechanical engineer, and in his initial personal statement, he does not mention any interest in designing, researching, or engaging in work related to renewable energy. While we acknowledge that he provided a letter with his initial petition from a flight test data science team member at [redacted] in which the writer discussed the Petitioner's work in promoting energy independence to mitigate the effects of climate change, the letter does not relate to the Petitioner's proposed endeavor to work as a mechanical engineer for a company that creates products for the materials handling field. As such, this letter is not relevant to our analysis. *Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). Similarly, we acknowledge a letter from a professor at [redacted] describing the Petitioner's prior research into the aerodynamics of blade technology; however, this letter also does not address the Petitioner's proposed endeavor to work as a mechanical engineer for a company like [redacted][3] *Id.*

[2] [redacted] website describes itself as "the global industry leader in belt conveyor solutions."

[3] We note that if the Petitioner wishes for us to consider the evidence submitted to support a proposed endeavor related to research into renewable energy and climate change, he must file a new petition. 8 C.F.R. § 103.2(b); *see also Matter of Izummi* and *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In denying the petition, the Director determined that the Petitioner's proposed endeavor to work as a mechanical engineer, "does not have substantial merit as it will only have one company benefiting from [his] endeavor." As the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education, we will withdraw the Director's determination and conclude his endeavor is of substantial merit. However, while the Petitioner has established his proposed endeavor has substantial merit, because he has not established its national importance, no purpose would be served in remanding the petition for further consideration.

To support the national importance of his proposed endeavor, the Petitioner provides the following information: publications from the National Renewable Energy Laboratory and the Intergovernmental Panel of Climate Change (2012); a letter from a researcher at the [redacted] a letter from a professor at [redacted] and a list of publications that have cited the Petitioner's research into wind energy and wind turbines. However, because this information relates to his post-RFE endeavor, it is not relevant to our analysis of whether his proposed work as a research and mechanical engineer is of national importance. *Matter of Chawathe*, 25 I&N Dec. at 375. As such, it will not be considered.

In the Petitioner's initial statement, he explains that his research will lead to the development of new products that will be promoted at the national level through [redacted] nationwide business channels and outreach. He further explains that because of [redacted] reputation as a world leader in belt conveyor productivity and because its products set the industry's standards for "design, ease of installation, and reliability," his work will be of national importance. In the Petitioner's RFE response, he describes his research and development of belt splicing technology as critical to the operations of the mining, construction, and manufacturing sectors, because his "work will lead to extending the life of vital equipment components such as belts and splices [which are] crucial in those industries, reducing time and increasing profits." In addition, he asserts that innovation and development of new equipment is significant for U.S. companies to maintain competitiveness in these industries.

To support these assertions, the Petitioner provides the following documentation: a letter from a former colleague explaining the importance of the Petitioner's prior work which "helped develop modeling tools for understanding plastic flow in a parison head used in Blow Fill Seal pharmaceutical machinery" and "developed the analytical understanding of a problem that was beyond our capabilities [and] . . . helped solve long standing design problems and led to breakthrough products;" evidence of the commercialization of three products that the Petitioner's patented work helped developed; and a blog post from a company titled "What is Conveyor Belt Splicing and its Popular Methods." We note that although the blog post provides a context for some of his assertions, it does not *specifically* discuss the Petitioner's proposed endeavor or explain how his endeavor would have broader implications. *See Matter of Chawathe*, 25 I&N Dec. at 375. For example, the blog post explains how conveyor belt splicing is the process of connecting two ends of a conveyor belt to create a continuous loop, however this information does not establish the national importance of the Petitioner's proposed endeavor. *Id.* Furthermore, the information related to the commercialization of his prior patented work would be relevant to *Dhanasar's* second prong, where we consider whether the Petitioner is well positioned to advance his endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner provides a paper from the National Institute of Standards and Technology citing the importance of the manufacturing industry because it contributed $2.3 trillion to the United States' gross domestic product (GDP) (which is 12% of total GDP). However, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor, and the report does not otherwise mention the Petitioner's endeavor or even the role of mechanical engineers in the manufacturing industry. *Matter of Chawathe*, 25 I&N Dec. at 375.

The Petitioner asserts that his research and design work will be spread through [redacted] "national channels," however this statement is too amorphous to establish his burden. *Id.* First, beyond assertions, the Petitioner has not established how improving belt splicing will impact the fields of mining, manufacturing, or construction. *Id.* Second, the record does not establish Flexco's "national channels" or that the Petitioner has an offer of employment at [redacted]. *Id.* Lastly, while the evidence establishes that his prior research led to commercialized products that are available for sale, the Petitioner has not provided sufficient information to understand the economic or technological impact of the potential products that will flow from his research on the manufacturing or materials handling fields. *Id.* While we acknowledge and agree with the Petitioner's assertion that innovation and development of new equipment is significant for U.S. companies to maintain competitiveness in these industries, he has not established that his proposed endeavor will extend the life of vital equipment, or increase profits. *Id.*

We explained in *Dhanasar* 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 . . . may well be understood to have national importance." *Matter of Dhanasar*, 26 I&N Dec. at 890. Here, the Petitioner has not provided any evidence to support his endeavor would have the substantial positive economic effects contemplated in *Dhanasar*. As such, without more, the Petitioner has not established his burden. *Matter of Chawathe*, 25 I&N Dec. at 375.

In *Dhanasar*, we also explained that an undertaking may have national importance because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner asserts his prior work as a mechanical engineer for [redacted] and his future proposed endeavor to work for them as a researcher and designer meets this standard. To bolster his claims, the Petitioner provides a letter from the director of engineering at [redacted] attesting to his prior work which led to the development of a new product that was "helpful" to the material handling industry. The specifics of this product included that "a power driver . . . was able to drive 5 rivets at a time quickly, reliably, and with minimal kickback to the operator." While this letter provides helpful details, and we acknowledge that the product may have resulted in some improvements to the manufacturing process, it is insufficient to understand the impact of this product on the field. *Matter of Chawathe*, 25 I&N Dec. at 375. In order to determine if his proposed endeavor would have a broad impact on the field of material handling, we would need to understand the scope of the implementation of his proposed work and product development, and this letter does not establish his burden. *Id.* Furthermore, the letter's discussion of the Petitioner's prior work accomplishments is relevant to prong two, where we consider whether he is well positioned to advance his proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890.

Finally, we acknowledge that the Petitioner's doctorate in aerospace engineering from [redacted] in Virginia, is an advanced degree in a science, technology, engineering, or mathematics (STEM) field, which he stresses is related to an area of critical and emerging technology or other STEM area important to U.S. competitiveness, which we must consider as a positive factor under the second *Dhanasar* prong. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https: //www.uscis.gov/policy-manual. Similarly, we acknowledge the evidence of the Petitioner's research publications, and research citation record; however, these factors are considered under *Dhanasar's* second prong, but do not establish his proposed endeavor's national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890.

On appeal, the Petitioner contends that the Director erred by evaluating the national importance of his "potential employment at a private company" rather than his endeavor. However, as noted above, the Petitioner's description of his proposed endeavor materially changed from working as a mechanical engineer for a company, like [redacted] to encompass researching and designing products to advance the field of renewable energy. As such, the Director correctly analyzed the Petitioner's initial proposed endeavor, and we agree with their conclusion that his endeavor will only impact his future employer. The Petitioner further contends that because his endeavor includes research, which will be disseminated in peer reviewed publications, the national importance of his proposed endeavor goes beyond his future employer's company. We acknowledge that dissemination of research can be nationally important, however the record is insufficient to establish how the Petitioner's research into improving the durability of belts and splices is in the national interest for the above stated reasons. We considered the Petitioner's analogy suggesting that his endeavor is akin to a researcher working at Pfizer who develops low-cost cancer drugs, or a researcher at Ford who develops a lighter and stronger steel. We acknowledge that with sufficient evidence, a petitioner may be able to establish that research and development of manufacturing products could be nationally important. Here, however, the record lacks sufficient information to establish the Petitioner's proposed endeavor is of national importance.

III. CONCLUSION

The Petitioner's proposed endeavor from his initial filing to his RFE response constituted a material change requiring the filing of a new petition. As to his initial proposed endeavor, the Petitioner has not established its national importance, and consequently that a waiver of the job offer and labor certification process, in the exercise of our discretion, is in the national interest.

ORDER: The appeal is dismissed.