U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33940696

Date: SEP. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer and project manager, 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 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 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. 8 C.F.R. § 204.5(k)(2). 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. *Id.*

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. *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 Petitioner earned a Master of Business Administration focused on strategic and economic project management in 2010 as well as a bachelor's degree in engineering in 2007. The record reflects that after graduating with his bachelor's degree, the Petitioner worked for various companies in the engineering field for more than five years. The Director determined that the Petitioner is an advanced degree professional and therefore qualifies for the underlying EB-2 visa classification. We agree. Thus, the remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver.

The Petitioner is an electrical engineer and project manager who proposes to provide consulting services to U.S. businesses and government agencies regarding data center infrastructure. The Director concluded that the Petitioner's proposed endeavor had substantial merit as required for a national interest waiver under the *Dhanasar* analytical framework. However, the Director denied the waiver, concluding that the Petitioner had not established that he satisfied the requisite three *Dhanasar* prongs, namely that his proposed endeavor was nationally important, that he was well positioned to advance the proposed endeavor, and that on balance, waiving the job offer requirement would benefit the United States. *See id.*

On appeal, the Petitioner claims that the Director did not follow regulations and policy guidance in denying the Form I-140 without discussing the arguments and evidence submitted with the initial filing and subsequent response to a request for evidence. Our review, however, reflects that the Director considered the Petitioner's arguments and the entire record in assessing the national importance of the Petitioner's proposed endeavor. The Director also made case-specific findings, including that the Petitioner did not submit a sufficiently detailed description of the proposed endeavor or documentary evidence establishing that the described endeavor has national importance, in part because the submitted evidence did not establish the endeavor has broader implications within the field on a national or global scale, has significant potential to employ U.S. workers, or has substantial positive economic effects particularly in an economically depressed area.[2]

[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] To the extent the Director concluded the Petitioner did not provide a detailed description of his proposed endeavor to form a basis for evaluation of national importance under the *Dhanasar* analytical framework we find that the Petitioner sufficiently articulated a proposed endeavor and we therefore withdraw the Director's determination to the contrary.

The Petitioner also claims that the Director misinterpreted the proposed endeavor by characterizing the Petitioner as an "entrepreneur." The Petitioner, however, does not specify how this purported misinterpretation affected the Director's reasoning and overall decision. And regardless, the Petitioner claimed in his business plan that his proposed endeavor is to operate as a consultant and we find that "entrepreneur," as used by the Director, does not materially misinterpret the proposed endeavor.

Finally, the Petitioner claims that 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." In *Dhanasar*, we noted that "[a]n undertaking may have national 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.

The Petitioner asserts on appeal that his proposed endeavor has national importance because it will upgrade and enhance the data center infrastructure in the United States which will produce economic growth and bolster national security. He also asserts his proposed endeavor addresses the shortage of professionals in the field and will aid businesses in becoming environmentally sustainable.

The Petitioner provided a business plan and personal statements wherein he stated his proposed endeavor is to provide high-level advice to U.S. companies regarding data centers and data storage through creation of a consulting company. In the business plan he further describes the importance of data centers to businesses and the economy of the United States. He also states there is a shortage of data center staff in the United States. He therefore claimed that his presence in the United States would help businesses across the United States benefit from data center services and generally benefit the U.S. economy in terms of rising investment, meeting sustainability goals, and new job creation.

Additionally, the Petitioner submitted, in part, an expert opinion letter, letters of recommendation, and industry articles. These submissions generally speak to the Petitioner's character and professional experience and/or the overall importance of data centers in the United States.

We acknowledge the above evidence which, as stated, primarily describes the Petitioner's experience in the field of data centers, or the overall impact data centers have on the economy of the United States. 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 the consulting services he intends to provide as part of his endeavor have broader implications beyond his own company and clients and at a level commensurate with national importance. Specifically, although he describes the types of services he intends to provide, he does not assert that such services are currently unavailable from other companies, nor does he 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 data center infrastructure industry. Additionally, the Petitioner's general assertions regarding the contributions his services will make to the national economy and job growth are not corroborated with supporting evidence and are insufficient to demonstrate his endeavor's potential to employ U.S. workers would be significant, that the economic growth or number of jobs created by his proposed endeavor would result in *substantial* positive economic effects, or that his business would be in an economically depressed area. Moreover, shortages of qualified workers in the United States are directly addressed by the U.S. Department of Labor through the labor certification process.

III. CONCLUSION

Based on the foregoing, 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 he was well positioned to advance the endeavor, or 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 are required under prongs two and three of the *Dhanasar* analytical framework. While the Petitioner also contests these conclusions 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 arguments on these issues. *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.