U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33962616

Date: SEP. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher, 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 established that the Petitioner qualified for classification, but that he 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.

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

In denying the petition, the Director concluded that while the Petitioner qualifies as a member of the professions holding an advanced degree, he had not established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Specifically, the Director determined that the Petitioner's endeavor did not meet the *Dhanasar* framework's requirements for national importance, nor did the Petitioner establish that, on balance, waiving the job offer requirement would benefit the United States.[3] Based on our de novo review of the record, we agree that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* framework.

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.

On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner listed his occupation as a researcher and that his job title in the proposed employment was "postdoctoral associate." In a personal statement submitted with the Petition, the Petitioner expressed his intentions to continue his career in the United States working in strategic communication, specifically risk and crisis communication, which he argued was a critical subfield related to his endeavor. The Petitioner explained that his endeavor's short-term plan was to apply his skills to help institutions and organizations with the ultimate goal of benefiting U.S. society and communities. He stated that he has previously conducted research addressing the COVID-19 pandemic and has published academic articles on this topic. The Petitioner asserted that after 15 years as a practitioner in the field, he has been in the United States since 2015 earning a master's degree and a doctoral degree, the dissertation for which developed a post-crisis learning model for

[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).

[3] The Director did not make a finding regarding whether the Petitioner's proposed endeavor had substantial merit or whether the Petitioner was well-positioned to advance it.

governments and other entities to "reduce the risk of repeated failures, and ultimately, save lives." He went on to state that after earning his Ph.D., he was selected for a full-time position to "lead communication efforts of an interdisciplinary project" regarding how dangers such as floods are communicated to individuals and how those message influences "planning and practice behaviors". The Petitioner asserted that the project is funded by the U.S. National Oceanic and Atmospheric Administration. He stated that at the conclusion of his current project, he intended to continue communication research to help individuals and institutions more whole respond to crises, focusing on gaps in scholarship that have the potential to impact society as a while. He further detailed that his future research plans would focus on post-crisis learning, specifically testing a model he has already developed, and communication and food security, an expansion of his past research on threats to food supply resulting from viruses. In addition to the Petitioner's statement, the record also includes letters of recommendation, the Petitioner's curriculum vitae, academic records, information about awards and recognition he has received, publications he has authored, information about his funding sources, and industry reports and articles.

In determining national importance, "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *See Dhanasar*, 26 I&N Dec. 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.

On appeal, the Petitioner generally asserts that he has already provided sufficient evidence of his eligibility for the national interest waiver, specifically that his proposed endeavor has national importance. He also submits additional documentation regarding his research's funding sources.[4]

First, the Petitioner argues that the Director's approach in applying the *Dhanasar* analysis was too narrow rather than "broad" as *Dhanasar* outlines. However, he did not elaborate how the analysis in his case should have been more "broad" or how an alternate analysis would have established his eligibility.

Further, the Petitioner contends that risk and crisis communication are a field of national importance. In support of this claim, the Petitioner reiterates that his academic work has been cited 12 times and has been read, viewed, or downloaded 854 times and that his proposed endeavor has received federal funding. We recognize the importance of the Petitioner's goals to assist institutions respond to public health crises and natural disasters. But the relevant question 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." *Dhanasar*, at 889. 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. Simply being employed in an occupation does not constitute an endeavor for the purposes of these proceedings.

[4] To the extent that the Petitioner's appeal presents documentary evidence of new facts regarding his eligibility for the requested benefit, the Petitioner must meet eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). New facts after the filing date cannot establish eligibility as of the priority date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

To the extent the Petitioner's current research and career goals constitute an endeavor, the record does not contain sufficient evidence documenting the future potential impact of the Petitioner's specific endeavor. For example, the four recommendation letters describe the Petitioner's past contributions to crisis communications research and the possible future uses of such research. However, they do not describe the endeavor itself or the Petitioner's future plans in detail that establish that its prospective potential impact would result in broader national implications. The industry reports and articles similarly emphasize the importance of the field generally and not the Petitioner's research. Although the Petitioner contends that he will conduct future research, he did not describe with sufficient detail the goals or impacts of that research and how it would be nationally important.

The Petitioner additionally asserts that the Director applied a higher standard in finding that the Petitioner's impact would not rise to the level of national importance because it would not trigger substantial positive economic impact, or act as a significant job creator. He reasons that this is incorrect according to the *USCIS Policy Manual.* The Petitioner contends that it would be impossible for any researcher to meet this standard and that claims of national importance related to the advancement of a field of study or enhancing societal welfare can suffice to satisfy the national importance requirement. The Petitioner is correct that a proposed endeavor can rise to the level of national importance through establishing criteria, including and not limited to, economic effects. However, in any given set of facts, it is a petitioner's burden to show by a preponderance of the evidence (more likely than not) that the proposed endeavor is of national importance. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). A petitioner must also support assertions with relevant, probative, and credible evidence. *Id.* at 376. As the Petitioner has not done so here, he has not sufficiently established that his proposed endeavor in the United States will have national importance under the first *Dhanasar* prong.

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining eligibility requirements for the requested national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

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

ORDER: The appeal is dismissed.