U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20604356

Date: MAR. 17, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference 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 EB-2 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 was an advanced degree professional and had established that he met both the substantial merit portion of the first prong and the second prong under the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), he had not demonstrated that he met both the national importance portion of the first prong and the third prong.[1] As a result, the Director determined that the Petitioner had not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal. The matter is again before us on a motion to reopen. On motion, the Petitioner submits a brief and additional evidence.

Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

I. LAW

A motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

As an initial matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, we examine any new facts to the extent that they pertain to our prior dismissal of the Petitioner's appeal.

The Petitioner's stated proposed endeavor is "to continue doing advanced engineering and management work in the [redacted] At the time of the appeal, the Petitioner had been promoted to the position of upstream portfolio global implementation lead by his employer, for whom he has worked in a variety of positions, divisions, and locations since 2003. In our prior decision, we discussed the deficiencies in the evidence submitted to establish that his proposed endeavor has national importance.

Regarding national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar,* 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of continuing to serve in his role(s) for an employer in the oil and gas industry, rather than the national importance of the industry overall. In *Dhanasar,* we noted that "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." *Id.* We also stated 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, for instance, may well be understood to have national importance." *Id.* at 890.

As discussed in our prior decision, we concluded that the Petitioner's proposed endeavor would primarily impact his employer, rather than the field or industry more broadly. Upon review of the evidence submitted on motion, including a number of government and/or industry reports, prior work product, and copies of two non-precedent decisions to establish the national importance of his endeavor, the Petitioner has not overcome this conclusion.

For example, the submitted decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Regardless, regarding the first decision, the Petitioner incorrectly asserts that we "have previously found that the field of [redacted] engineering" is of national importance. We did not, however, find "the field of [redacted] engineering" to have national importance, but rather we concluded that the petitioner in that matter established that his proposed endeavor as an energy policy researcher had national importance. Further, and more importantly, similar to our recent decision in this matter, we specifically concluded that the petitioner in that case had not established that his "consulting and project management work would impact his field or the U.S. [redacted] industry more broadly, as opposed to

being limited to his future U.S. employer or the clients he intends to serve." The second decision, a dismissal of a third motion, indicated that a White House Fact Sheet and a report from the U.S. Department of Energy (DOE) "helped show the substantial merit and national importance of the Petitioner's proposed work under *Dhanasar*'s first prong." Not only is it clear that these documents were not the only basis for our conclusion, but the record does not establish that these two documents, or any of the similar reports the Petitioner submitted on motion, sufficiently demonstrate the national importance of the Petitioner's specific proposed endeavor (as opposed to the energy sector or the [redacted] industry). While such information may "attest[] to the value of the [redacted] industry" and discuss its national security benefits, for example, that is not the issue in this matter. As previously stated, we look to evidence documenting the "potential prospective impact" of the Petitioner's proposed endeavor, not the impact of his employer or the importance of his industry.

The Petitioner also reiterates his expertise and record of success in previous projects, provides copies of prior work product, and relies on his high salary. However, as we explained in our prior decision, these are considerations under the second prong, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890.

In addition, the Petitioner generally asserts that he "offers original innovations that would contribute to the field more broadly," but, as we stated in our prior decision, fails to sufficiently establish, for example, that any specific original innovations he has been responsible for have impacted his field of [redacted] engineering, the [redacted] industry, or the energy sector at a level commensurate with national importance.

The record establishes that the Petitioner is a well-respected, experienced, and valuable employee and that his proposed endeavor has substantial merit. However, the Petitioner's motion does not include documentary evidence of new facts that overcomes the grounds underlying our previous decision and that renders him eligible under the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

As the Petitioner has not established new facts relevant to our previous decision that would warrant reopening of the proceedings, his underlying petition remains denied. The Petitioner has not established he is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The motion to reopen is dismissed.