U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28449168

Date: OCT. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for a national interest waiver. The matter is now before us on appeal. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be 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.[2]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that conclusion. 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical 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. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner describes his proposed endeavor as follows (quoted as written):

> I decided I wanted to contribute to the nation through the operations of my own business and branched off on my own in December 2018, wholly dedicated to [my company] as its Owner and Electrical and Energy Engineering Manager. [My company] was created to serve the commercial and residential sectors by helping them improve energy efficiency, increase the safety of their buildings and the wellbeing of its occupants, upgrading their aging electrical infrastructure, and incorporating new technologies such as renewable energy, building management systems, energy storage systems, and electrical vehicle charging infrastructure. In my critical role, I am responsible for working with other companies throughout the nation to develop plans, products, and methodologies for improved energy management. I perform energy audits at client sites, evaluate energy efficient measures, and implement energy management systems to help clients reduce the costs of energy while becoming more sustainable.

Although the Director determined that the Petitioner's proposed endeavor has substantial merit, the Director concluded that the record did not establish that the endeavor is of national importance.

In determining 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. In *Dhanasar*, we further 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

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. In *Dhanasar* we determined that the petitioner's teaching activities 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 asserts through a brief from his attorney that the Director's decision was "an erroneous application of the law and regulations," contending that the Director did not review all of the evidence of record. The Petitioner, however, does not specify how the Director erred or what factors in the decision were erroneous.[3] The Petitioner also contends, without further explanation, that the Director "applied a stricter standard of proof" than that of preponderance of the evidence[4] and did not consider all of the evidence submitted. The Petitioner points to several items of evidence in the record that he claims establish the national importance of his endeavor, including a business plan. The business plan describes his company as follows (quoted as written):

> [The company] is an organization with domicile in [redacted] County, FL that offers innovative sustainability and energy efficiency services, renewable energy supply options, electrical infrastructure upgrades and process improvement solutions to residential multifamily, single-family, and commercial building owners while also providing them with advice regarding environmentally sensitive buildings and green building certification processes.
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> ...
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> [The company] is targeting both the residential and commercial building markets and will be working closely with multi-family, single-family and low-income multifamily building owners and residents providing them the ability to make energy efficiency, electrical and energy management improvements in their properties while benefiting their tenants with lower utilities costs and increased living standards for the occupants.

The business plan lists the company's recent accomplishments, such as deploying electric vehicle chargers, executing an air sanitation system in a 35-story office tower, and providing fee energy audits to several schools and housing complexes. The business plan anticipates having four direct employees and 37 "outsourced" employees by 2025, as well as garnering $1,305,000 in revenue that year. These numbers and additional sales forecasts included in the business plan do not appear to be based on current operational figures for the Petitioner's company or demonstrate the company's relationship to the energy survey statistics referenced in the business plan; the record does not contain documentation showing the company's current operating posture and how it corresponds to any financial projections, nor does it illustrate how or whether the company will broadly impact energy usage. Similarly, the business growth forecast charts do not include the origins of any figures used to calculate growth

[3] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

[4] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

projections. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 at 376. The business plan also depicts energy usage information for commercial buildings in the United States; it is not clear how the Petitioner's small business in Florida would address energy inefficiencies in commercial spaces on a national scale. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's pursuits in the field of renewable and efficient energy infrastructure would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

The record also includes expert opinion letters discussing reports and studies related to the global engineering services market, energy usage, and the effects of greenhouse gases, as well as the Petitioner's experience.[5] The content of these reports and studies, while it may relate to the industry in which the Petitioner intends to operate his business, does not speak to the national importance of the Petitioner's specific endeavor to manage a single company providing services in the energy sector. As stated previously, regarding national importance, the focus is not on the importance of the industry or profession in which the individual will work, but on "the specific endeavor that the foreign national proposes to undertake." In *Dhanasar* we also determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the field of engineering, the energy industry, or the U.S. economy more broadly at a level commensurate with national importance. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

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) (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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

[5] We note that the Petitioner's experience is generally relevant not to the first prong of the *Dhanasar* framework, but to the second.

ORDER: The appeal is dismissed.