U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30188621

Date: FEB. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a psychologist, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish 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. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

A. Substantial Merit and National Importance

On appeal, the Petitioner presents a brief but does not add new evidence or assertions to address the reasoning the Director provided in the decision. In the request for evidence (RFE) and the decision, the Director addressed many of the Petitioner's assertions regarding the national importance of the proposed endeavor. The Director discussed multiple pieces of evidence individually and quoted material in several instances. For example, the Director discussed the Petitioner's proposed endeavor statement, updated and initial petition support letter, as well as White House fact sheets and proclamations the Petitioner submitted into the record. The Director identified the evidence and explained the specific reasons why the evidence did not establish the Petitioner's eligibility under the *Dhanasar* analytical framework.

We adopt and affirm the Director's analysis and decision regarding the first *Dhanasar* prong. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F3d. 5, 8 (1st

Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Below we provide individualized consideration to the petition and to many of the Petitioner's appellate claims.

On appeal, the Petitioner discloses a misunderstanding of the *Dhanasar* analytical framework. To satisfy the *Dhanasar* analytical framework's first prong, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. As the Director correctly concluded, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. And the "governmental evidence" the Petitioner submitted can support that. But, when evaluating national importance, we shift the focus from the importance of the field or industry within which a petitioner will work to "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Director was correct that the "governmental evidence" the Petitioner submitted did not address their specific endeavor's national importance. Consequently, as the Director correctly observed, the evidence did not "address why the [Petitioner's] proposed endeavor...is of national importance."

The Petitioner asserts the Director abused their discretion in failing to address all evidence, citing *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) in support. The court in *Buletini*, however, did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. And the Petitioner also cites *Chursov v. Miller*, 1:18-CV-02886-PKS (S.D. NY 2019) that a "partial analysis shall lead to an unreasonable and, thus, arbitrary decision." But the Petitioner has not demonstrated the specific way the Director's analysis was incomplete other than a generalized assignment of error.[1] When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor it is necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (Citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). We conclude the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

The Petitioner contends that their initial filing and RFE response contained ample "testimonial and objective documentary evidence to establish the national importance of the proposed endeavor from both an economic and social welfare standpoint." However, the Petitioner does not specifically identify any evidence the Director ignored regarding the economic and social welfare impact of the proposed endeavor. As stated above the objective evidence in the record, the Petitioner's self-styled "governmental evidence," does not reference the Petitioner's specific proposed endeavor. Instead the Petitioner improperly relies upon the importance of the industry and professions described within the "governmental evidence" as sufficient to establish the national importance of the proposed endeavor.

[1] We are not bound to follow the unpublished decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I7N Dec. 715 (BIA 1993).

The testimonial evidence in the record, specifically the letters of recommendation and work experience the Petitioner submitted, do not analyze the proposed endeavor or offer evidence of its impact. The Petitioner's statements contain broad assertions like the Petitioner is a "qualified professional," but they provide little to no information on how their endeavor will operate and any detailed information about how their services by and through their endeavor would have global or even national implications, broader implications, or positive economic effects such that we could evaluate whether the endeavor ascends to a level of national importance. The Petitioner's assertions, without evidence to substantiate them, do not establish their eligibility. And any basic economic activity has the potential to positively impact the economy and social welfare; however, the Petitioner has not offered a sufficiently direct connection between their proposed endeavor activities and any demonstrable societal welfare. The record does not contain an evidentiary basis to conclude the effects of their specific proposed endeavor will rise to a level of national importance.

As the Director correctly explained, the Petitioner has not established eligibility under the *Dhanasar* analytical framework. We adopt and affirm the Director's analysis and decision regarding the first *Dhanasar* prong and conclude the Petitioner has not establish they are eligible for or otherwise merit a national interest waiver.

B. Well Positioned to Advance the Proposed Endeavor

We disagree with the Director and hereby withdraw the Director's conclusion that the record established the Petitioner was well-positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor, we review the following and any other relevant factors:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

It is not clear how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor. We recognize the Petitioner has earned education and has skill and knowledge in their discipline. But simply having education, skills, and/or knowledge in isolation do not place a petitioner in a position to advance their proposed endeavor. This is only one factor amongst many factors which are evaluated together to determine how well positioned a petitioner is to advance a proposed endeavor. It is not clear from the totality of the evidence in the record how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor. For example, the record as currently constituted does not reflect how the Petitioner's prior performance of the duties described in the experience letters is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. Whilst the Petitioner submitted their statements describing a plan or model for future activities, the record does not reflect any progress to achieving the proposed endeavor in a manner sufficient for us to evaluate how well positioned they are to advance it. Finally, the

recommendation and work experience letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support in the endeavor the Petitioner proposed in their petition because, as stated above, they only speak of the Petitioner's competent execution of past job duties. The competent execution of past job duties, even successfully, does not automatically render a petitioner well positioned to advance their proposed endeavor. As stated above, a petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. at 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). So the evidence in the record does not sufficiently describe how well situated the Petitioner would be to advance their petition's proposed endeavor.

III. CONCLUSION

As the Petitioner has not established that they meet the first or second prong of the *Dhanasar* framework, they have not shown that they are eligible for and otherwise merit a national interest waiver, and we reserve this issue. *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). As the Petitioner has not met the requirements of the *Dhanasar* analytical framework, we find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.