U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29404872

Date: JAN. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 the Petitioner did not establish eligibility for a national interest waiver under the first prong of the framework outlined in Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

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.

On appeal, the Petitioner presents a brief but does not add new evidence or arguments to confront 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 initial and updated statements, as well as the articles and reports about the technology industry. The Director further identified numerous deficiencies in the evidence and explained specifically why the evidence did not establish the Petitioner's eligibility under the Dhanasar 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 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts 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.

The Petitioner distinguishes between the proposed endeavor and prospective employment, asserting that a petitioner does not need to provide a detailed plan of employment to satisfy the first Dhanasar prong. While we recognize the distinction between an endeavor and employment, we conclude that employment held in furtherance of the proposed endeavor, while not required for national interest waiver eligibility, provides helpful information about the level of impact the proposed endeavor may have and therefore its broader implications, if any. The extent to which the Petitioner can carry out his proposed endeavor may differ depending on whether the Petitioner provides services as an independent contractor under the aegis of an established company, runs his own business, or works for a private company that provides him with an existing client base. Although the Petitioner states the adjudicator "imputes negative bias towards the lack of an official business plan" and thereby imposed upon him a novel or unique requirement, we do not find support in the record for this conclusion. The Director explained the reasons the record did not establish the endeavor's national importance. The decision does not mention the lack of a business plan or job offer, nor does the decision suggest that the Petitioner's articulation of his proposed endeavor was incomplete, vague, or otherwise lacking. Rather, the Director determined the Petitioner had not established the national importance of his proposed endeavor.

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. 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 is it 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 the Director ignored evidence, such as various articles and government reports, evidencing the importance of 5G networks, the Internet of Things (IoT), and cybersecurity, among other topics. However, the Director's decision referenced the articles and reports in multiple instances and explained why the Director found such evidence to be insufficient to establish eligibility under prong one. As such, we do not find support for the Petitioner's contention.

The Petitioner contends that his 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. The objective evidence in the record, such as the industry articles and reports, do not reference the Petitioner's specific proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry and professions within in it, which the articles and reports demonstrate, as sufficient to establish the national importance of the proposed endeavor.

The testimonial evidence in the record, such as the recommendation letters, do not analyze the proposed endeavor or offer evidence of its impact. The Petitioner's statements contain assertions that he will help "thousands of companies and people," but he provides little to no information on how his endeavor will operate on such a scale nor does he provide detailed information about how his services will "generate welfare." The Petitioner's assertions, without evidence to substantiate them, do not establish his eligibility. 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 his proposed endeavor activities and any demonstratable societal welfare. The record does not contain an evidentiary basis to conclude that the effects of his specific proposed endeavor will rise to the level of national importance.

As the Director fully 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 established he is eligible for or otherwise merits a national interest waiver.[1]

ORDER: The appeal is dismissed.

[1] 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 and any issues related to eligibility for the underlying EB-2 classification. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "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).