U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31843647

Date: JUL. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and a financial manager, seeks second preference immigrant classification (EB-2) 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 immigrant 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 Petitioner qualified for the underlying visa classification as a member of the professions holding an advanced degree,[1] but that he 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 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 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish 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 (AAO 2016), provides the framework for adjudicating national interest

[1] The record demonstrates that the Petitioner has a foreign equivalent of a U.S. bachelor's degree in business administration from [redacted] in Colombia and five years of progressive experience in the field.

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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.*

II. ANALYSIS

The Petitioner intends to operate a business, [redacted] in New Jersey and provide financial advice and business formation trainings to entrepreneurs and microentrepreneurs, especially to the women heads of household. The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of the *Dhanasar*'s analytical framework.[3]

Upon review of the entire record, we adopt and affirm the Director's decision. *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). As discussed below, the Director's decision summarized the pertinent evidence and analyzed why the Petitioner's endeavor did not meet the national importance element in *Dhanasar*.

The Petitioner claimed that his endeavor would contribute to the overall economic development in the United States and has "the potential to catalyze economic expansion by empowering microentrepreneurs and facilitating the efficient allocation of capital in the post-pandemic reality." However, after evaluating and analyzing the evidence, such as the Petitioner's personal statements, expert opinion letters, and various articles and reports discussing the importance of small and medium businesses and women and youth in entrepreneurship, the Director concluded that the record does not corroborate the Petitioner's claims. Specifically, the Petitioner's personal statements and the expert

[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 further concluded that the Petitioner is not well-positioned to advance his proposed endeavor under the second prong, and the evidence does not support that the endeavor, on the balance, would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification, under the third prong.

opinion do not meaningfully analyze how his proposed endeavor meets the national importance as defined in *Dhanasar*. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

The Director also noted that the industry related articles and government initiatives on small businesses and entrepreneurship provide background information on the field of finance and speculate on the industry's effect on the American economy in general but do not discuss the Petitioner's specific endeavor and its impact with persuasive details. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar,* 26 I&N Dec. at 889.

The Director further evaluated the Petitioner's business plan but determined that the plan does not provide sufficient basis as to how the projected hiring of 15 full-time employees and 15 independent contractors in five years demonstrate "significant potential to employ U.S. workers or has other substantial positive economic effects" for any region or the nation. *Id.* at 890. Additionally, the Petitioner did not provide corroborating information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his activities, aside from the claims made in the business plan. The Petitioner must submit relevant, probative, and credible evidence to establish the national importance of the proposed endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Director also noted that the record did not demonstrate that the Petitioner will pursue his endeavor in an economically depressed area.

On appeal, the Petitioner generally summarizes and reiterates the evidence previously submitted on record, such as benefits of his profession and importance of the entrepreneurship and small businesses startups, and the claimed economic impacts of his proposed business as provided in his business plan. The Petitioner contends that the Director failed to consider the totality of the evidence provided and misapplied *Dhanasar*. However, the Petitioner does not provide any new evidence or compelling arguments that overcome the Director's determination.

The Petitioner contends on appeal that the Director misapplied *Dhanasar* by discussing recommendation letters while evaluating national importance under the first prong. Although we agree that reference letters are more "suited for the well-positioned criterion" under the second prong, the Petitioner has not shown that any precedent law or regulations prohibit the Director from considering recommendation letters in the first prong. Moreover, the Director appropriately reviewed the recommendation letters in assessing whether the endeavor has national importance as the other evidence in the record did not provide specific information about the endeavor and did not corroborate the Petitioner's claims.[4]

The Petitioner also asserts that the Director made contradictory statements by first acknowledging that the Petitioner "provided numerous government initiatives and regulations that illustrate the impact of the endeavor on a matter considered nationally important" but later stating that the evidence submitted

[4] The Director ultimately concluded that the recommendation letters from the Petitioner's former colleagues did not address the endeavor's specific impact or special methodologies attributable to the Petitioner in the field of finance or entrepreneurship.

"does not show specific government interest." We disagree with the Petitioner's interpretation of the Director's statements. The Director first acknowledged that the reports and articles on government initiatives established importance of the finance industry and entrepreneurship in general and substantial merit of the proposed endeavor. However, the Director properly noted the deficiency in the record documenting the interest of the federal government or other relevant national agencies in the Petitioner's specific proposal to support the claims of national importance. In *Dhanasar*, we gave significant weight to "probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests" and "detailed expert letters describing U.S. Government interest" in Dr. Dhanasar's specific research. *Id.* at 892. Here, the Petitioner has not provided similar evidence, such as the type of expert opinion evidence or letters from government entities detailing how his specific endeavor impacts a matter that is a subject of national initiatives. None of the articles and reports specifically mention the Petitioner's endeavor or discuss the government's interest in promoting the use of the Petitioner's innovation or solutions.

Lastly, the Petitioner contends that the Director did not evaluate the totality of the evidence and that there is "ample evidence" in the record demonstrating national importance of the endeavor by the preponderance of evidence standard. The Petitioner cites to *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) (stating that failure to consider all of the relevant evidence submitted by a plaintiff constitutes an abuse of discretion). However, the court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility nor does it suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence.[5] Therefore, we are not persuaded by the Petitioner's claim that the Director ignored the evidence on record. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly weighed various evidence to evaluate whether the Petitioner had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework but determined that the evidence overall lacked probative value.

In sum, we agree with the Director that the Petitioner has not provided evidence to support that his endeavor as a financial manager or a business owner would have broader implications beyond his clients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. Therefore, the petition will remain denied and further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose. *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).

[5] When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 341 (2d Cir. 2006) (citing *Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000)).

III. CONCLUSION

Because the Petitioner did not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.