U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31840674

Date: JUL. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the supply chain industry, 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 did not qualify for the EB-2 classification as a member of the professions holding an advanced degree and that he had not established 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 waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *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).

- 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 Director concluded that the Petitioner's proposed endeavor has substantial merit but not national importance under the first prong of the *Dhanasar*'s analytical framework.[2] Specifically, the Director found that the Petitioner did not establish his endeavor would have a broad impact on the field or significant positive economic effects commensurate with national importance. For the reasons discussed below, we agree with the Director.

With the initial filing, the Petitioner described himself as "a professional . . . with more than 15 years of experience in the logistics area and the supply of goods and services in the industrial and freight transport sector" and proposed to "[offer] my knowledge and talent for the creation of a supplier portal in the area of civil works construction in the United States." The Petitioner stated in his personal statement that he plans to assist small and medium-sized businesses (SMEs) by "being the connecting hub between the supplier and buyer" and create a web portal where SMEs can acquire information on "legal, financial and commercial aspects of multiple supplier companies on a single platform" and have access to "a database of suppliers and contractors of the construction industry," along with comparative price analysis tools and online quotes.

The Petitioner claims on appeal that he submitted "with the initial petition documentation of a well-defined proposed endeavor as well as supporting evidence . . . speaking to the importance of the Petitioner's endeavor to the field and nation as a whole." However, the initial petition lacked important details on how the Petitioner plans to build and market the proposed web platform, the type of companies that he intended to work with, or the geographic locations in which he would work. The Petitioner stated that his endeavor will generate "at least 4 jobs initially in the US" but did not submit a business plan or other corroborating documents to demonstrate national importance of his endeavor as contemplated in *Dhanasar*. Instead, the Petitioner offered various articles on the real estate market and the housing supply shortage, along with the Biden administration's fact sheets on the importance of the construction and supply chain industry.

In response to the Director's request for evidence (RFE), the Petitioner submitted a revised personal statement and introduced a business plan. The revised statement continued to claim that his endeavor

[2] The Director also concluded that the Petitioner did not establish eligibility under the second or third prong of *Dhanasar*.

will develop and implement "a collaborative logistics model for construction and manufacturing distribution" and create "a streamlined procurement process." But the Petitioner added that the web portal or platform will include "a service package dedicated to sustainable construction connecting suppliers and applicants to facilitate the exchange and reuse of sustainable building materials." The Petitioner also stated that he will "provide business advice and facilitate connections between Latin American investors and U.S. incorporated companies, primarily focusing on the construction industry." The Petitioner's endeavor as initially filed did not mention sustainable construction or connection with Latin American investors.

On appeal, the Petitioner contends that the Director disregarded his personal statements and "numerous articles and reports submitted to demonstrate the national importance of the Petitioner's endeavor." However, the Director's decision addressed the Petitioner's assertions regarding the endeavor's national importance as described in his personal statements, discussed various articles and reports in the record, and explained that the evidence submitted emphasized the importance of the field or industry in general instead the importance of the Petitioner's specific proposed endeavor. In *Dhanasar*, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* As such, we do not find support for the Petitioner's contention.

Here, 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. 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. However, 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.

The Petitioner broadly asserts that his endeavor "to develop a collaborative logistics model for construction and manufacturing distribution responds to critical challenges faced by the national construction industry." But the record does not offer any supporting evidence as to how his logistics model or process would have a broad impact in the field. The Petitioner has not suggested that his solutions or methodologies somehow differ from or improve upon those already available and in use in the United States, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." The reference letters from the Petitioner's former work colleagues or letters of interest from several businesses in Florida demonstrate that the Petitioner's skills and experiences are valuable to his past employers and potentially to other businesses, but the evidence does not establish that his future endeavor or special methodologies attributable to the Petitioner rises to the level of national importance.

The expert opinion letter submitted with the Petitioner's RFE response does not provide any details on this logistics model or platform. Instead, the letter states that the Petitioner "intends to encourage sustainable business and environmental sustainability in the construction sector" and then generally discusses the economic significance of logistics and supply chain industry in the United States before

describing the Petitioner's endeavor as providing "high quality services" in a wide variety of areas" such as "acquisition advisory, legal constitution and insurance policies, construction permit advice, technical advice, partnership facilitation, web portal services, and more." It appears that the author's statements do not meaningfully detail the purpose and nature of the Petitioner's endeavor. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988).

The Petitioner overall 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. We find that the Director has acknowledged and analyzed various documents on record but concluded overall that the quality of the evidence lacked probative value in supporting national importance of the endeavor. 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. *Id.*; *see also Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The Petitioner also claims that the Director erroneously relied on *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) to "disqualify the business plan submitted." Although the Director stated that the business plan was submitted after the issuance of the RFE and cannot establish eligibility at the time of filing, we gather from the Petitioner's initial statements that he was planning his business endeavor prior to filing the petition. Therefore, the fact that the date of the business plan post-dates the filing date of the petition does not affect the Petitioner's eligibility and we will consider the business plan as evidence submitted in support of his endeavor. Furthermore, despite the dismissal of the business plan based on *Matter of Katigbak*, the Director, in fact, spent a significant portion of the decision discussing the business plan before concluding that the evidence does not corroborate the plan's claimed economic benefits to Florida or the United States. As the Petitioner's subsequent contentions are actually based on the Director's analysis of the business plan, we will address them below.

First, the Petitioner contends that the Director erred by overemphasizing the geographical scale of his endeavor. Although we agree with the Petitioner that the impact outlined in the *Dhanasar* "does not focus solely on a geographical scale," the Petitioner has not provided persuasive examples where the Director overemphasized the endeavor's geographical scope in the decision. In *Dhanasar*, we noted 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" or "[e]ven ventures and undertakings that have as their focus one geographical area of the United States" may be considered

to have national importance. *Id.* at 889-90. Therefore, the Director's statement that "the Petitioner has not shown . . . benefits to the regional or national economy" to the level of "substantial positive economic effects" aligns with the *Dhanasar*'s analytical framework and does not constitute, as claimed by the Petitioner, "an abuse of discretion" or "a novel criterion."

Moreover, we are not persuaded by the Petitioner's claim that hiring 38 workers in five years is "more than enough to meet the plain language of the criterion when coupled with the ample projection-based evidence provided in the record." While the metrics in the business plan indicate that the Petitioner's company has growth potential, the record lacks independent and corroborating evidence to support the basis of the financial and staffing projections in his business plan. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Any basic economic activity has the potential to positively impact the economy; however, the Petitioner has not offered a sufficiently direct connection between his proposed endeavor's activities and any demonstratable substantial economic activities. We determined in *Dhanasar* 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. *Dhanasar,* 26 I&N Dec. at 893. Similarly, we find that the Petitioner has not established his proposed endeavor in this case will sufficiently extend beyond his clientele and employees to affect the regional or national economy more broadly.

Based on the foregoing, we conclude that the Petitioner has not met the first prong of the *Dhanasar*'s analytical framework. Therefore, we decline to reach whether he meets the remainder of the second and third prongs. Furthermore, as we find that the record does not establish that the Petitioner merits a national interest waiver, we decline to address the Petitioner's arguments raised on appeal regarding whether he qualifies for the underlying EB-2 classification. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. *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"); *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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established 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.