U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31111353

Date: JUNE 4, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an economic development professional, seeks classification as a member of the professions holding an advanced degree. 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 attached to this EB-2 classification. *See* section 203(b)(2)(B)(i) of the Act. 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 although the Petitioner qualifies as an advanced degree professional, the record did not establish that a waiver of the job offer requirement is 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 immigrant 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, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 a matter of discretion,[1] 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director found that the Petitioner qualifies for the EB-2 classification. Based upon the evidence in the record that the Petitioner obtained the foreign equivalent of a master's degree in development management from [redacted] Colombia in October 2017, we agree.[2] The Director also concluded that the Petitioner established the substantial merit of the proposed endeavor and that he is well-positioned to advance it. The issues on appeal are whether the Petitioner has established the proposed endeavor's national importance and whether, on balance, a waiver of the job offer requirement would benefit the United States.

The Petitioner did not clearly define his proposed endeavor in the initial filing. The Petitioner submitted a personal statement in which he describes his proposed endeavor as follows (note: errors in the original text have not been changed):

> My endeavor is to ensure that U.S. (economic) interests and values are well-represented in keeping a growing and strengthen the economic development of the country without losing perspective of the environmental impact. I aim to protect Americans investing or seeking to invest abroad, particularly in Latin America, and to defend their interests by creating legal strategies, scholarly articles, and giving direct advice to foreign governments. I strive to ensure U.S. companies and citizens (as well as the government) are provided the same kinds of basic economic basic accompaniment so both Americans and foreigners doing business within the U.S., can have better opportunities in the market. I aim to implement my knowledge in innovation and entrepreneurship and spread unique approaches to small bussiness, in order to ensure the better qualify of life and prosperity for the people in the U.S.

The Petitioner later in his personal statement also states (errors in the original text have not been changed):

> Finally, I have some great business ideas that I would like to develop in the U.S. In the short term I would like to open my own consultant firm to help as much small businesses and companies giving my advice and applying my knowledge for their benefit. As a sport fan and amateur triathlete, in the Mid-term I would like to create my own triathletes club so I can give share my experience with others and received

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and the Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[2] The record shows the Petitioner also obtained the foreign equivalent of a bachelor's degree in international economics from [redacted] also in Colombia.

> people from around the world to make training camps and have someplace to train when they come to the U.S. In the long run, I would like to do an MBA here and why not, teaching in a university.

In response to the Director's request for evidence (RFE), the Petitioner submitted a "proposed endeavor statement," in which he clarified that his endeavor is "to build on my extensive experience with international commerce and economics, to develop international expansion strategies for [small- and medium-sized enterprises (SMEs)] in order to strengthen business relationships between U.S. companies and Latin America, and therefore enhance U.S. economic competitiveness."

In concluding that the Petitioner did not establish the national importance of the proposed endeavor, the Director found that the evidence was insufficient because it did not indicate that the proposed endeavor has national or global implications within the commerce field or the significant potential to employ U.S. workers or have other substantial positive economic effects.

On appeal, the Petitioner contends that the Director's analysis of the first prong is contrary to precedent case decisions and the USCIS Policy Manual. Specifically, the Petitioner claims that the Director did not provide "any meaningful review or rationale" in reaching the conclusion that the Petitioner did not demonstrate national importance. Additionally, the Petitioner claims that the Director did not consider the totality of the evidence in the record that demonstrates the national importance of the endeavor. The Petitioner specifically points to the articles and reports submitted that discuss international trade with Latin America, small businesses in the United States, and related U.S. government initiatives. Finally, the Petitioner claims that the endeavor is nationally important and that the Petitioner's personal statements contain "ample arguments supported by objective documentary evidence" which establish this claim.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Although the Petitioner claims that the Director did not sufficiently explain the basis for denial, upon de novo review we conclude that this claim is not supported by the record. Rather, the Director's decision cites to specific information in the record and includes findings that are well-supported by the language of *Matter of Dhanasar*. Similarly, we do not find sufficient support for the claim that the Director did not consider the totality of the evidence in the record. The Petitioner states that the failure to consider all the relevant evidence submitted has been found to be an abuse of discretion and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mi. 1994). While we agree that an adjudicator should consider the relevant evidence in the record,[3] we also note that U.S. district court decisions, such as the one the Petitioner cites, are not binding precedential authority. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the

[3] *See* 8 C.F.R. § 103.2(b)(1).

analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). More importantly, however, the Petitioner does not sufficiently support the claim that there was relevant evidence that the Director did not consider.

In support this claim, the Petitioner states the petition included "evidence from reputable industry and U.S. government sources" that demonstrates the need for strengthening business relationships between SMEs in the United States and in Latin America. The Petitioner cites to the articles in the record such as those from the U.S. Chamber of Commerce and the Office of the U.S. Trade Representative about international trade and economic growth, information from the Small Business Administration (SBA) about small business exports, and a report from the Congressional Research Service about the SBA's trade expansion programs. The Petitioner claims that these articles demonstrate that the proposed endeavor "aligns with and complements multiple national government initiatives and programs aimed at improving business development, competitiveness, and international expansion of U.S. SMEs." Additionally, the Petitioner claims that this evidence establishes that the proposed endeavor has the potential to impact "the development and expansion of the U.S. economy as a whole." The Petitioner claims that this evidence establishes the national importance of the proposed endeavor but was not considered by the Director.

While the Director's decision does not specifically name each piece of evidence in the record, this is not indicative of a failure to consider the evidence. *See Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention."). *See also Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (joining the Seventh and the Federal Circuit Courts of Appeals in presuming that the Board reviewed all of the evidence of record). The Director does acknowledge that the Petitioner submitted various reports and articles about the Petitioner's field, but concludes that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work, but rather the specific endeavor that the individual proposes to undertake. Therefore, we do not find sufficient support for the Petitioner's claim that the Director failed to consider all of the evidence in the record.

Moreover, upon de novo review of the record, we agree with the Director that the articles, reports, and evidence of government agency priorities submitted by the Petitioner do not establish the endeavor's national importance. These articles provide background information about small businesses, trade, and the economic benefit of exports to Latin America from the United States. However, this evidence relates only to the field of international trade in general and not the Petitioner's specific proposed endeavor. As the Director stated, in determining whether a proposed endeavor has national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake," rather than the field. *See Matter of Dhanasar*, 26 I&N Dec. at 889. These articles and reports do not discuss the Petitioner's specific endeavor and do not help demonstrate the potential prospective impact of the endeavor on SMEs in the United States, on increasing trade with Latin America, or on the economy as a whole, and do not otherwise demonstrate the national importance of the endeavor.

The Petitioner contends on appeal that the personal statements in the record contain "ample arguments supported by objective documentary evidence" which establish the endeavor's national importance. However, this claim is not supported by the record. The objective, documentary evidence in the record, such as the articles and reports discussed above, do not reference the Petitioner's proposed endeavor and do not sufficiently demonstrate the national importance of the endeavor. Contrary to the Petitioner's broad claim otherwise, we conclude that the record does not contain sufficient evidence to establish that the impact of his proposed endeavor has the potential rise to the level of national importance.

The Director's decision reviewed, discussed, and analyzed the Petitioner's documentation consistent with our precedent decision in *Matter of Dhanasar*. On appeal, rather than specifically identifying any errors in law or fact in the decision, the Petitioner merely makes broad, general assertions that the Director did not properly analyze the evidence and that he has established eligibility. These assertions, however, are not supported by the record, do not overcome the basis for the denial, and are insufficient to establish the Petitioner's eligibility for a national interest waiver.

The Petitioner's claims on appeal do not overcome the basis for the Director's findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the third *Dhanasar* prongs. *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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.