U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29137179

Date: MAR. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a consultant in the information technology field, 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 that the Petitioner did not establish that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The Director concluded that the Petitioner met the underlying EB-2 classification as an individual with an advanced degree and that his proposed endeavor was of substantial merit. However, the Director also concluded the record did not support the proposed endeavor's national importance, that the Petitioner was well-positioned to advance the endeavor, or that on balance, it was beneficial to the United States to waive the job offer requirement. 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 asserts that the Director applied novel substantive and evidentiary requirements and deprived the Petitioner of his due process rights and fair treatment. However, instead of identifying erroneous conclusions of law or statements of fact, the Petitioner makes references that are not in the Director's decision. For example, the Petitioner states that the Director deprived him of his due process rights by not conducting a final merits determination on whether he is qualified as an individual of exceptional ability. However, the Director determined that the Petitioner met the EB-2 classification as a member of the profession holding an advance degree or its equivalent. Therefore, no exceptional ability determination is needed as the Petitioner satisfied eligibility for the underlying EB-2 classification. *See* 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2) and 8 C.F.R. § 204.5(k)(2). The Petitioner also states that the Director, "erroneously assumed that the Appellant's proposed endeavor does not have substantial merit. . . ." However, the Director determined that "[the Petitioner's] proposed endeavor is of substantial merit. . . . "

Further, the Petitioner restates similar reasoning on appeal that the Director already considered and addressed in denying the petition, and relies on evidence and explanations previously provided, which the Director referenced, quoted, and cited in the decision. The Director thoroughly addressed the *Dhanasar* framework and explained why the Petitioner meets some of the eligibility criteria, but not all, and therefore why she denied the petition. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

We adopt and affirm the Director's decision regarding the Petitioner's eligibility under 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).

The Petitioner states in the appeal and in the business plan that the proposed endeavor will be generating eight jobs for U.S. workers. The number of jobs created does not rise to the level of, "significant potential to employ U.S. workers" as required by *Dhanasar*. *Id.* at 890. The Petitioner also asserts that he has over 24 years of work experience that proves he will successfully manage his business. This is more appropriate for an analysis on whether the Petitioner is well positioned to advance the endeavor and does not further a national importance determination. In addition, in the appeal and in the record, the Petitioner relies heavily on industry articles and reports about the importance of the information technology industry. While we acknowledge the industry's importance, the relevant question when determining whether a proposed endeavor will have national importance is not the importance of the industry or profession in which the Petitioner will work, but the specific impact of the proposed endeavor. *Id* at 889. Here, the record does not establish that the proposed endeavor will have "national or even global implications" within the field of information technology. *Id.* For the above reasons, 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.

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record satisfies the second or 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).

ORDER: The appeal is dismissed.