U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185378

Date: MAR. 29, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner is an industrial engineer who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree as well as a national interest waiver (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish the Petitioner merits a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 an NIW, 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, 889 (AAO 2016), provides the framework for adjudicating NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

II. NATIONAL INTEREST WAIVER

The Petitioner indicates his proposed endeavor is to rely on his experience in industrial engineering, construction, finance, and business development to facilitate real estate and construction engineering projects in the United States by creating a multidisciplinary engineering company capable of holistically assessing projects. He asserts this will result in a more successful approach to crafting engineering projects and his efforts will have a particular focus on increasing the U.S. housing supply to meet a growing demand.

The Director did not make a specific determination of whether the Petitioner met the requirements for the EB-2 classification. And before we discuss any NIW requirements, we will address one of the errors the Petitioner attributes to the Director. The Petitioner claims the Director failed to provide any meaningful review for the evidence he submitted both initially and in the request for evidence (RFE) response and provides as an example, articles submitted in the RFE response. A review of the Director's decision does not bear out the Petitioner's assertions of error. The Director not only mentioned the articles, but they also explained why they carried diminished evidentiary value. The Director explained that the articles provided useful background information relating to the industry or profession in which the Petitioner would work, but none of them addressed the Petitioner's proposed endeavor. Here, the Petitioner has not established an error attributable to the Director.

Additionally, the Petitioner provides a lengthy analysis relating to when an RFE is, and is not, warranted. But we see no reason to discuss these assertions as they have no bearing on the outcome of our decision. The Petitioner does however, state that the failure to discuss all elements of the evidence submitted with the original petition and the RFE response places him at a disadvantage and characterizes this is a significant defect in the Director's decision. The Petitioner notes in prior cases, federal courts have noted that decisions failing to contemplate or discuss the entirety of the evidence in a filing amounts to critical error in the adjudicative process.

In support of this concept, the Petitioner cites to *Buletini v. INS*, 860 F. Supp. 1222, 1233 (E.D. Mich. 1994). The *Buletini* court opinion referred to the Director's failure to consider all the forms of evidence that the petitioner in that case submitted such as the book and the medical dictionary he authored, and his study that appeared in the largest circulation newspaper in that petitioner's home nation. *Buletini*, 860 F. Supp. at 1232–33. These are *forms* of evidence that the *Buletini* court determined that USCIS director had failed to consider; the court did not indicate that director was required to discuss each and every piece of evidence within the record.

Although we agree with the Petitioner that the Director did not directly discuss every piece of evidence that it considers as salient to qualifying under this program, he has not established how those omitted documents demonstrated eligibility. In other words, the Petitioner did not demonstrate that the Director's failure to discuss every document in detail changed the outcome of the case; that is the Petitioner's burden, which he fell short of meeting. 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 a petitioner presents. *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009). "Nothing is to be gained by a laundry-list recital of all evidence on the record supporting each view on every issue." *Puerto Rico Mar. Shipping Auth. v. Fed. Mar. Comm'n*, 678 F.2d 327, 351 (D.C. Cir. 1982) (finding claims to be unpersuasive that a trier of fact "did not consider the evidence because it did not catalogue every jot and tittle of testimony" or evidence).

It is not enough to demonstrate errors in an agency's decision; the Petitioner must also establish that they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016); *Amin*, 24 F.4th at 394. While we agree that the Director did not discuss every form of evidence he presented, the Petitioner doesn't establish through his appeal brief that these materials are sufficient to demonstrate his proposed endeavor has national importance.

As the Petitioner has not demonstrated he was prejudiced by the lack of discussion of any evidence, even if we agreed that this was an error, such a lapse appears harmless and is insufficient grounds upon which to base this appeal. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)). The party that "seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Shinseki*, 556 U.S. at 409 (quoting *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943)); *Molina-Martinez*, 578 U.S. at 203.

A. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889. The Director did not indicate whether the Petitioner's endeavor has substantial merit and we will not make a determination on that matter.

But the Director did evaluate whether the proposed endeavor has national importance. When we evaluate national importance, the relevant question is not the importance of the industry or profession in which the foreign national will work. Rather, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The endeavor must substantially benefit and "impact the field . . . more broadly" (*Id.* at 893) as "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* at 889. "An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. Ultimately, when we evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence illustrating the "potential prospective impact" of his actual proposed work. *Id.* at 889.

Within the appeal brief, the Petitioner discusses how his business plan supported his eligibility under *Dhanasar's* first prong. Some portions of the business plan the Petitioner filed with the initial petition filing were in a foreign language. Without the Director prompting him to amend the business plan in the RFE, the Petitioner provided another business plan in the RFE response. The second business plan apparently corrected the foreign language issues, but several of the charts were missing data that was present in the initially provided version. The Petitioner also added information to other parts of the business plan, some of which is salient to his eligibility. For instance, the second business plan added the number of positions his endeavor would initially generate, as well as justification and analysis related to indirect job creation and the demand for his proposed endeavor.

The Director did not identify these issues as being problematic to the Petitioner's claims even though they introduce the issue that he made material changes to the endeavor's business plan in between the initial filing and the RFE response. Material changes to a petitioner's claims are not allowed to improve upon their chances for a petition approval. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). This adversely impacts the Petitioner's eligibility under the first prong as he relies on job creation to support his claims that the proposed endeavor has national importance.

Next, the Petitioner raises arguments he presented in the RFE response that focused on several aspects of the construction and engineering industry rather than directly on his proposed endeavor. For instance, the Petitioner submitted a U.S. government report, a government press release, and website articles, none of which were about the Petitioner's proposed endeavor. In the appeal, the Petitioner mentions the proposed endeavor's focus on the construction and engineering broader industry while attempting to attribute the national importance of the broad industry to his endeavor and he explains how the endeavor aligns with recently enacted legislation. The Petitioner reasons that an increase in government investment in the construction industry through this legislation highlights the potential for considerable advancement, development, and participation in the construction sector. Simple alignment or shared common aspects with statutes relating to an industry are not sufficient to meet the first prong's national importance portion. In focusing on the construction and engineering industries, the Petitioner has not established the endeavor will substantially benefit and impact the field more broadly. This misplaced focus does not address the national importance requirements of the *Dhanasar* decision, nor does it adequately tie the Petitioner's endeavor to those occupational improvements. *Id.* at 893.

We acknowledge the Petitioner intends for the endeavor to promote growth and inclusivity in the construction industry, to contribute to an increase in housing supply, and to meet the growing demand of the population. However, he has not shown that his endeavor will have substantial positive economic effects or impacts, which is a focus in *Dhanasar* for endeavors proposing to positively affect the economy. The *Dhanasar* decision explains that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects . . . may well be understood to have national importance." *Id.* at 890. We acknowledge it isn't necessary for those effects to be national in scale. Still, *Dhanasar* does concentrate on an elevated showing from petitioners relating to the potential prospective impact, and on the potential to employ U.S. workers. First, petitioners should demonstrate "substantial positive economic effects" or impacts to a particular area, region, or

industry. *Id.* Second, simply having the potential to employ U.S. workers does not rise to the metric noted in *Dhanasar* that such potential be "significant." *Id.* Both of these exceed simply creating positive economic effects in the area, region, or industry or possible job creation, as this descriptive language in *Dhanasar* ("substantial" and "significant") carries meaning, is of particular importance for endeavors relating to economic improvement claims under the first prong, and is not considered dicta.

In his appeal brief, the Petitioner claims his personal statements "contained ample arguments supported by objective documentary evidence to support the assertions therein with respect to the economic benefits of the Petitioner's proposed endeavor." Despite this conclusory statement, the evidence the Petitioner references relates to the construction industry and not to his actual proposed endeavor. It is insufficient, as the Petitioner asserts, that "[b]y participating in the growth and development of the real estate and construction sectors, [his] endeavor is poised to not only contribute to economic recovery but also fuel sustained growth and prosperity." Lacking from the record is an indication of the extent to which the Petitioner's endeavor would make these contributions, and as such, a showing that his endeavor would have substantial positive economic effects rather than incremental or nominal impacts.

Further, through the business plan and the remaining evidence, the Petitioner has not demonstrated the "significant potential to employ U.S. workers," which is a focal point in *Dhanasar*. *Id.* Even if we presume the business plan projections are realized, also missing is the Petitioner's explanation of the manner in which these forecasted figures will offer *substantial* economic benefits to the area or to the industry. The Petitioner should provide sufficient evidence to support his claims that these estimates rise to the level of national importance and have a broad impact in his field. *Id.* at 893.

Closing his appellate discussion of the first prong, the Petitioner notes the standard of review for meeting each of the relevant and respective prongs in the *Dhanasar* decision is a preponderance of the evidence standard. The Petitioner subsequently states:

> It is not inherently necessary to meet each of the possible evidentiary examples provided in the precedent decision in order to prove that a proposed endeavor is of national importance. Instead, so long as a Petitioner has provided sufficient evidence to demonstrate that the proposed endeavor is of national importance by a preponderance of the evidence, the standard is met and the prong is satisfied.

Here, it is unclear what the Petitioner means when he references "each of the possible evidentiary examples" originating from the *Dhanasar* decision, as he does not expand on this concept. However, we make two observations.

First, *Dhanasar* itself speaks to the requirements under the preponderance of the evidence standard when citing to *Chawathe*, 25 I&N Dec. at 376 and noting "a petitioner must establish that he or she more likely than not satisfies the qualifying elements." *Dhanasar*, 26 I&N Dec. at 889 n.8. Second, the Petitioner's simple assertions that she submitted evidence satisfying the NIW requirements by a preponderance of the evidence is a perfunctory method to apply the preponderance standard. Instead, we follow *Chawathe's* reasoning when we consider a piece of evidence by evaluating its quality, reviewing its contents, and finally coming to a conclusion of whether that material supports a

petitioner's claims. That analysis should result in an officer determining whether a petitioner has preponderantly demonstrated that their claims are true, and that those claims are sufficient to satisfy the statutory and regulatory requirements, in addition to the interpretations of those legal sources as outlined in precedent decisions and agency guidance. Ultimately, the truth is to be determined not by the quantity of evidence alone but by its quality. *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79–80 (Comm'r 1989)).

In other words, the process of meeting the standard isn't simply submitting evidence; it requires an evaluation of those materials relating to their reliability and relevance. It does not appear the Petitioner factored these aspects into her analysis of the preponderance standard. And it remains that making a determination on what the evidence establishes under this immigrant program falls to USCIS, not to the Petitioner. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). As a result, the Petitioner's assertions that the previously submitted evidence satisfies his burden of proof has been considered, but it is not determinative of the issue. Ultimately, we stated what is required to demonstrate a proposed endeavor has national importance in the second paragraph of this section. We incorporate those mandates here by reference and conclude for the reasons discussed above that the Petitioner has not met those requirements.

B. *Dhanasar's* Second and Third Prongs

As we explain above, *Dhanasar's* second and third prongs require the Petitioner to demonstrate he is eligible for an NIW meeting additional requirements. But because the Petitioner has not established that his proposed endeavor satisfies the *Dhanasar* framework's first prong, he is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.