U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34356027

Date: NOV. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and instructor in the field of martial arts, 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 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 determined that although the Petitioner established that he qualifies for the underlying EB-2 visa classification as an advanced degree professional, 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 Director applied the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), and concluded that the Petitioner did not demonstrate that he satisfied both elements of the first prong, which requires a showing that the proposed endeavor has both substantial merit and national importance. The Director determined that the despite satisfying the substantial merit element, the Petitioner did not establish that his proposed endeavor has national importance.[1] Specifically, the Director determined that the record lacks evidence showing that the Petitioner's work as an entrepreneur and instructor would have implications for his field or for the U.S. economy on a national scale. Moreover, the Director concluded the Petitioner did not establish that his proposed endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States.

The Director discussed the Petitioner's business plan and recommendation letters from peers and colleagues. Regarding the former, the Director determined that the Petitioner did not adequately explain how he intends to realize the business plan's staffing and revenue projections, nor did he establish that the projections, even with adequate evidentiary support, would result in a level of job growth or revenue generation that is commensurate with national importance. The Director also acknowledged that the Petitioner stated that the company will be located in a designated HUBZone. However, the Director noted that the Petitioner did not provide any evidence to establish that his business would operate in a HUBZone area or that it would be eligible to do so. And although the

[1] Pursuant to *Matter of Dhanasar*, a national interest waiver may be granted to a Petitioner who demonstrates that: 1) the proposed endeavor has both substantial merit and national importance; 2) the individual is well positioned to advance their proposed endeavor; and 3) on balance, waiving the job offer requirement would benefit the United States.

Director acknowledged that the recommendation letters discussed the Petitioner's experience and achievements in his field, the Director determined that the letters did not include information about the proposed endeavor or explain how it is nationally important.

The Director also addressed the various industry articles and reports and found that they did not discuss the Petitioner's endeavor. The articles and reports discussed the importance of martial arts, immigrant entrepreneurship, and personal trainers. However, the Director noted that when determining national importance, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

In sum, the Director determined that the Petitioner did not substantiate that his specific business endeavor would trigger substantial positive economic benefits or that it would otherwise result in a potential prospective impact at the national importance level. 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. We will also 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 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).

On appeal, the Petitioner argues that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, the Petitioner does not point to specific examples of this within the Director's request for evidence or denial. Importantly, the Petitioner also does not offer a detailed analysis explaining the particular ways in which the Director "imposed novel substantive and evidentiary requirements" in denying the petition.

The Petitioner further alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the Appellant." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner also asserts that the Director did not "give due regard" to certain evidence, such as his résumé, business plan, letters of recommendation, or the industry reports and articles, he previously submitted. However, as noted above, the Director specifically mentioned and discussed content in the Petitioner's business plan, and the Director explained why the submitted letters of recommendation were not sufficient to establish the proposed endeavor's national importance. Further, while the Petitioner stresses his credentials and work experience, which were also highlighted in his résumé, such evidence addresses the Petitioner's knowledge, skills, education, and experience; these are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar,* 26 I&N Dec. at 890. Evidence of the Petitioner's credentials and experience in the field of martial arts does not demonstrate the national importance of the proposed endeavor or establish that the impact of the endeavor would extend beyond the Petitioner's clients and employees. And while the Petitioner notes that he previously submitted articles and industry reports, which the Director also discussed, it is unclear how this evidence establishes the proposed endeavor's national importance given that none of these submissions pertain specifically to the endeavor in question, but rather more broadly discuss the benefits of martial arts, the importance of immigrant entrepreneurship, and the employment and wages of personal trainers.

As to the Petitioner's assertion that he "will play a pivotal role in addressing an industry shortage" of business professionals, the national shortage of business professionals is not, in and of itself, sufficient to establish the national importance of the Petitioner's endeavor. Further, the Department of Labor directly addresses U.S. worker shortages through the labor certification process.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.[2] The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[2] *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"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).