U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32848914

Date: SEP. 05, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur/CEO, 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 denied the petition, concluding that the Petitioner qualified for classification, but 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 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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.

Id.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

The Petitioner stated on the Form I-140, Immigrant Petition for Alien Workers, that he intends to work in the United States as the CEO of a company called [redacted] In a statement submitted with the petition, the Petitioner described his plans to "build a company specialized in running international grade renewable energy feasibility studies and net-zero energy strategies to help individual clients and companies achieve their goals with clean and renewable resources". He went on to claim that his company was of national importance because his company would generate 80 new jobs for U.S. workers in an economically distressed city in Florida. The Petitioner argued that his endeavor would play a key role in U.S. economic recovery after the COVID-19 pandemic and would help attract investment in the region and therefore encourage economic development. In addition, the Petitioner's business plan described his project as of national importance and urgency as it aimed to reduce greenhouse emissions and global warming effects and therefore U.S. dependence on foreign oil and gas suppliers who represent a threat to U.S. interests. He asserted that his company's services will "help the U.S. achieve net zero energy grid", which he detailed as a building's creation of renewable energy meeting or exceeding the total amount of energy it uses.

[2] *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).

In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the Petitioner's specific proposed endeavor would impact the regional or national population at a level consistent with national importance, such as by employing a significant population of workers in an economically depressed area, creating an impact beyond his prospective clients, or otherwise offering a large-scale positive economic benefit. The Director further determined that the Petitioner did not demonstrate that his individual background and professional attributes established that his proposed endeavor stood to impact the broader field. The Director concluded that the Petitioner had not submitted relevant, probative, and credible evidence to support his assertions.

On appeal, the Petitioner submits a brief and asserts that he has met the eligibility requirements for a national interest waiver by a preponderance of the evidence. He contends that the Director did not give due regard to his submitted resume, business plan, evidence of work in the field, letters of recommendation, and industry reports and articles, including ones addressing a shortage of U.S. professionals with his profile in the field. The Petitioner argues that his contributions to energy independence and environmental sustainability are inherently of national importance because they address broader societal needs and align with similar national priorities. He renews claims from his business plan that his endeavor would generate employment opportunities and economic growth and would employ 80 people within five years. Additionally, the Petitioner claims that USCIS imposed novel substantive and evidentiary requirements beyond those set for the in the regulations.

First, in determining national importance, "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." *See Dhanasar*, 26 I&N Dec. at 889. The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. In *Dhanasar*, we determined that the petitioner's teaching activities, even in a field with substantial merit in relation to U.S. educational interests, did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

Here, we find that the Petitioner's reliance on the national importance of the goals his endeavor seeks to address is misplaced. The Petitioner contends on appeal that the Director overlooked his previously-submitted evidence of eligibility for the requested petition. While the Petitioner submitted nearly 500 pages of industry reports and articles addressing the importance of renewable energy, merely working in an important field is insufficient to establish the national importance of the proposed endeavor without evidence documenting the "potential prospective impact" of a petitioner's work. Similarly, the business plan, letters of recommendation, resume, and statements from the Petitioner in the record largely demonstrate the Petitioner's individual professional background rather than the potential impact of his specific endeavor. They also do not include independent, corroborating evidence to support his claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. However, the Petitioner has not submitted additional evidence on appeal, nor has he identified specific documents in the record to support his claim that his proposed endeavor would impact his field more broadly. Commensurate with the Petitioner's burden of proof is the responsibility for explaining the significance of proffered evidence.

Repaka v. Beers, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014); *see also Adler v. Duval Cnty. Sch. Bd.,* 112 F.3d 1475, 1481 n. 12 (11th Cir. 1997) (noting in a civil case that, absent plain error, it is not the place of an appellate body to grant appellants relief "based on facts they did not relate"). As the Petitioner here has not corroborated his claim that he has demonstrated that his proposed endeavor will substantially benefit the field of renewable energy, the record therefore does not establish such a finding.

Next, in *Dhanasar*, we stated 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, for instance, may well be understood to have national importance." *See Dhanasar*, 26 I&N Dec. at 890. The Petitioner claims on appeal that he can fill a shortage of professionals in his field in the United States. He also claims that in five years, he can employ 80 people in an underutilized area in Florida and would generate $2,743,424 in tax revenue. We acknowledge the details the Petitioner outlines in his business plan. However, the record does not sufficiently detail the basis for the Petitioner's financial and staffing projections. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor. While the Petitioner expresses his desire to contribute to the United States, he has not established with specific, probative evidence that his endeavor will have significant potential to employ U.S. workers or will have other substantial positive economic effects in Florida or the United States.

Finally, the Petitioner argues on appeal that the Director did not apply the appropriate preponderance of the evidence standard of proof in his case and instead proposed a stricter standard." The Petitioner, however, does not identify any unusual requirements imposed, nor does the Petitioner specify how the Director erred or what factors in the decision were erroneous.[3] Here, the Director thoroughly analyzed the Petitioner's documentation and weighed his evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.

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[3] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).