U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33403817

Date: SEP. 05, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an Operations Manager and Marketing Developer, 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.

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,[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.

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 his occupation is as an Operations Manager and Marketing Developer. He further described himself as a civil engineer with 20 years of professional experience in the swimming pool construction industry and asserted that his proposed endeavor was to establish a company that would deliver specialized civil engineering services in this industry. In a business plan submitted with the petition, the Petitioner stated that he planned to replicate an established model from Brazil, find a company that outsources the manufacturing of the modular system he would use, and monitor the manufacturing and market development of the product. The Petitioner also submitted a business plan in response to a request for evidence (RFE) which claimed that the swimming pool construction industry was the 34th largest construction industry in the United States with a market size of $9.6 billion. He contended that current pool construction methods are labor-intensive and expensive, but his "unique, patent-protected modular system" would result in cost savings for buildings and users. The updated business plan went on to argue that swimming pools add value to residential properties, as well as tourism to rental homes with pools, and that their construction contributes to economic stimulation by creating jobs and supporting local suppliers through the purchase of materials. The Petitioner noted that his modules could be adapted for water storage in emergencies because they can be assembled in any size and could be made available to military bases or isolated communities. In support of his argument that his endeavor had substantial merit and national importance, the business plan stated that his company is aligned with President Biden's Climate Resilience Regional Challenge and New Building Code Initiative to address the impacts of climate change, as well as the Emergency Plan for Adaptation and

[1] *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).

Resilience to address water related issues in developing countries. He further asserted that his company would employ 14 people by the end of its fifth year and would have a ripple effect to other industries. The record also includes copies of the Petitioner's patents in Brazil, a magazine article featuring an interview with the Petitioner, letters of support, industry articles, and articles about immigrants and entrepreneurship.

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 had substantial positive national economic effects, such as by employing a significant population of workers. The Director further determined that the Petitioner had not shown that providing his expertise to a swimming pool construction company or a U.S. company had national or global implications beyond the impact on his company and its customers.

On appeal, the Petitioner submits a brief and copies of previously-submitted technical patent documents. He renews claims that he has met the eligibility requirements for a national interest waiver. The Petitioner states that the Director's denial contradicted the evidence in the record, including his response to the RFE. In support of his claim that his proposed endeavor is of national importance, the Petitioner argues that because his is a STEM (science, technology, engineering, or mathematics) field, it should be viewed as of national importance according to recent USCIS policy guidance on national interest waivers and the Biden-Harris Administration's focus on attracting global talent in the STEM fields. He further contends that his endeavor aligns with current U.S. government initiatives. The Petitioner asserts that he would bring unique building technology to the United States and that the models he uses are environmentally efficient. In the appeal brief, he includes diagrams and explanations of the equipment and transportation methods he intends to use in his endeavor. The Petitioner further argues that this technology would serve various purposes, such as providing emergency water storage during national disasters.

Regarding the Petitioner's assertions related to the national importance of his proposed endeavor, we adopt and affirm the Director's decision on this issue with the comments below. *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 this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As a general matter, 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). Here, while the Petitioner avers on appeal that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not specify, as required, how the Director erred or what factors in the decision were erroneous. Rather, the Petitioner largely reiterates the claims he made below and generally asserts that is proposed endeavor is of national importance.

The Petitioner contends that his proposed endeavor falls within a STEM profession, which should be taken into consideration in determining its benefits for the United States. However, we find that the Petitioner's reliance on the national importance of the goals his endeavor seeks to address is misplaced. With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor

has both substantial merit and national importance.[2] Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.[3] On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance.[4] Here, the Petitioner has not shown that his endeavor aims to advance STEM technologies and research or has broad implications rather than simply working within a STEM profession.

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.

[2] *See generally* 5 USCIS Policy Manual D.2, https://www.uscis.gov/policymanual.
[3] *Id.*
[4] *Id.*