U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23069389

Date: JUL. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a petroleum engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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.

I. LAW

To establish eligibility for a national interest waiver, 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner shows:

- 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.

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

As it relates to the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's initial cover letter indicated:

> [The Petitioner] intends to advance his career as a Petroleum Engineer, designing and developing methods for extracting oil and gas from oil and gas fields. [The Petitioner] has extensive experience working with renowned companies in the oil field services industry . . . .
>
> . . . .
>
> Based upon his experience in the oil and gas sector, [the Petitioner] will be able to utilize his solid experience gained in more than 10 years of working on directional drilling, petroleum engineering, mechanical maintenance and training other field engineers . . . .
>
> . . . .
>
> . . . [The Petitioner's] endeavor is of national importance because the U.S. oil and gas sectors are growing. This creates a demand for exceptional petroleum engineers, such as [the Petitioner] who are skilled at evaluating the economic viability of potential drilling sites and estimate the production capabilities of oil and gas wells. His in-depth technical knowledge in petroleum geology, directional drilling, reservoir and well engineering, petroleum production engineering and use of industry specific equipment and technology makes him an asset to the U.S.

Further, the Petitioner's "Professional Plan & Statement" reflected:

> I intend to continue using my expertise and knowledge in the oil and gas sector by working as a Petroleum Engineer in the United States . . . .
>
> . . . .
>
> I will be able to utilize my solid experience gained in more than 10 years of working with renowned companies where I focused on directional drilling, petroleum engineering, mechanical maintenance and training other field engineers . . . .
>
> . . . .
>
> My career plan is to work with American companies to provide expert advice, services and leadership regarding drilling and petroleum engineering . . . .

In response to the Director's request for evidence (RFE), the Petitioner submitted a business plan for [redacted] indicating he "relies on developing [redacted] an Engineering Service firm

that provides Oil & Gas drilling engineering services, headquartered in Texas, with operations in New Mexico and Louisiana."

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner stresses "[h]is experience will certainly be an asset in assisting U.S. companies to meet consumers' demands for technologically responsive and more specialized products." As indicated, the Petitioner initially claimed he intended to "work with American companies." However, in response to the Director's RFE, the Petitioner asserted he intended to open and operate his own company, [redacted] The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening and operating his own business.[2]

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although he provided "Industry Reports and Articles" relating to a wide range of topics, such as oil and gas extraction, petroleum engineers, and immigration and the economy, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing his particular petroleum engineering services to companies rather than the importance of the occupation or the industry or field. In *Dhanasar*, we noted that "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.* We also 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." *Id.* at 890. We note here the Petitioner also contends the need for petroleum engineers in the United States. However, the alleged shortage of an occupation does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner emphasizes his experience, skills, and knowledge. The Petitioner's experience and abilities in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor he proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. The Petitioner did not offer specific information and evidence to corroborate his assertions that the

[2] In fact, the Petitioner's business plan, tax documentation, and business formation evidence reflect events occurring after the filing of the initial petition.

prospective impact of working as a petroleum engineering for unidentified employers rises to the level of national importance. In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show through supporting documentation how his specific employment services stand to sufficiently extend beyond his prospective employers, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show his initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show any benefits to the U.S. regional or national economy resulting from his petroleum engineering position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[3]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[3] *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 alternate issues on appeal where an applicant is otherwise ineligible).