U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26958902

Date: JUN. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an architectural engineer, seeks second preference 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 EB-2 immigrant 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 as a member of the professions holding an advanced degree, 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 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.

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 (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:

[1] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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 second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner initially stated on Form I-140 that his proposed employment is "architectural and engineering manager" and submitted "Professional Plan & Statement" describing his proposed endeavor as follows:

> My career plan in the United States is to continue my career by working as an Architectural Engineering Manager in the U.S., for American construction companies that require my specialize knowledge, experience, and expertise, primarily in developing roads and bridges.

[2] The Director made this finding in his request for evidence (RFE) issued on April 8, 2022. The Petitioner submitted his diploma and transcripts of a master's degree in civil engineering from Universidade [redacted] in Brazil and an academic evaluation showing that his foreign degree is equivalent of a U.S. advanced degree.

The Petitioner added "I can also use my knowledge and extensive contacts in Brazil to secure investments and increasing company revenue for architecture and construction companies in the U.S." The Petitioner's initial description of the proposed endeavor does not provide any other details beyond his intention to continue working as an architectural engineering manager for unidentified U.S. companies. The Petitioner claimed that his proposed endeavor is of national importance because there is a high demand for architectural engineering professionals, and he will "most assuredly advance U.S. construction and civil infrastructure development" through planning, designing, and constructing commercial infrastructures; managing technical and construction teams; facilitating cross-border construction projections; negotiating contracts with suppliers and manufacturers; and improving the structural integrity of developments.

The Director's request for evidence (RFE) sought further information and evidence that the Petitioner meets each of three prongs of *Dhanasar* framework. In response, the Petitioner submitted "Definitive Statement" revising his proposed endeavor as follows:

> I intend to continue using my expertise and knowledge, gained through more than thirty-five (35) years of experience and services in the field of civil engineering, to develop a construction company, [redacted] in Florida, Georgia, and Alabama. My company will provide aluminum and glass structures (curtain walls, storefronts, glass partitions, shower enclosures, etc.) to governmental, business, and residential projects.

The Director found that the Petitioner's proposed endeavor has substantial merit, but not national importance. On appeal, the Petitioner contends that the Director did not apply the proper standard of proof and erred by not giving "due regard" to the evidence submitted, specifically the Petitioner's resume, business plan and definitive statement, documentation of his work in the field, letters of recommendation, and industry reports.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director 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.

In determining national importance, 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. Here, the nature of the Petitioner's proposed endeavor is unclear. The Petitioner's initial filing included generalized statements regarding his occupation as an architectural engineering manager and his intention to work for U.S. companies to build commercial infrastructures such as roads, bridges, or highways. However, in response to the Director's RFE, the Petitioner changed his proposed endeavor to developing his own company that will provide and install aluminum and glass structures for residential and non-residential buildings.

Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. However, the Petitioner's varying statements and claims obscure the focus of his work and the nature of his proposed endeavor. While the Petitioner's initial statements reflect his intention to seek direct employment with U.S. companies as an architectural engineering manager to build roads and bridges, his revised statements indicate that he will run his own company and install aluminum and glass structures such as partitions, walls, and storefronts. We do not know if the Petitioner intends to perform both functions he describes or he will only perform the first job that he secures. Therefore, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its substantial merit and national importance as defined by *Dhanasar*. The Petitioner must resolve ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner claims on appeal that he demonstrated national importance through previously submitted documentation of his expertise and experience in the field and letters of support discussing his knowledge, skills, and work experience as an architectural engineer. However, these documents relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner's resume and recommendation letters only address his past accomplishments as an architectural engineer impacting his workplace and do not address national importance of his endeavor's "potential prospective impact." These letters describe in detail the Petitioner's successful handling of past commercial infrastructure projects, especially construction and inspection of the [redacted] bridge, and attest to his technical ability, competence, and professionalism. We acknowledge that the Petitioner made valuable contributions to construction projects for his employers in the past, but he has not offered sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rising to the level of national importance.

The recommendation letters do not address the Petitioner's proposed endeavor or explain how the endeavor will substantially benefit the United States, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 893. [redacted] a civil engineer and a consultant to the [redacted] bridge project, stated that he published two scientific articles in partnership with the Petitioner but does not suggest that the Petitioner's technical skills and abilities somehow differ from or improve upon those already available and in use in the United States.

The Petitioner also claims national importance of his proposed endeavor based on previously submitted industry reports and articles. The Petitioner has submitted a wide range of articles and reports addressing various topics such as importance of the construction field in enhancing growth of infrastructure in the United States; outlook on real estate industry and shortage of affordable homes; talent shortage in the manufacturing and engineering industry; and valuable contribution to the U.S. economy made by immigrants and immigrant entrepreneurs. We recognize the value of the construction industry and career, as well as significant contributions from immigrants who have

become successful entrepreneurs; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

Instead, we noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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 the Petitioner submitted an expert opinion from [redacted], an adjunct professor of mathematics at [redacted] College of New York. The opinion letter generally discusses the Brazilian economy as one of the largest in the world and efforts made by the United States to win architecture and construction projects in Brazil. [redacted] then concludes that the Petitioner's work has national importance since his expertise and skills as an architect will benefit U.S. construction companies doing business or planning to do business in Brazil. However, the opinion letter does not indicate any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor of working as an architectural engineering manager for a U.S. company. In addition, the Petitioner's revised statement and business plan submitted after the Director's RFE do not mention any collaborative works between his own company and Brazilian companies, or that his company is actively targeting U.S. companies that does business or plans to do business in Brazil. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

The Petitioner claimed that his company, [redacted] will boost job creation and provide substantive economic benefits as his business plan's five-year projection estimates 4.7 million dollars in wages, 64 new jobs for U.S. workers, and over 9.4 million dollars in sales taxes. However, the business plan by itself does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence, aside from claims in his business plan and his own statement, that his company's staffing levels and business activity stand to provide substantial economic benefits in Florida, Georgia, Alabama, or the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's arguments regarding her eligibility under the second and third prongs. *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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that the Petitioner has not established eligibility for 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.