U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28819158

Date: NOV. 03, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an architect and program manager, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 the Petitioner did not establish eligibility for a national interest waiver under the framework outlined in Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). 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.

On appeal, the Petitioner presents a brief, reiterating arguments he made in his response to the Director's request for evidence (RFE). The Director already addressed many of these arguments in the decision. The Petitioner does not add new evidence or arguments to confront the reasoning the Director already provided. The Director discussed multiple pieces of evidence individually and quoted material in the record in several instances. The Director further identified numerous deficiencies in the evidence and explained specifically why the evidence did not establish the Petitioner's eligibility under the Dhanasar framework.

We 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). Below we provide individualized consideration to the petition and to many of the Petitioner's appellate claims. Although the Director already addressed some of these issues, we provide additional context for them.

The Petitioner asserts the Director conflated the Petitioner's employment with his proposed endeavor and that the "endeavor is plainly different from the proposed employment the petitioner seeks to hold in furtherance of the endeavor." The Petitioner reiterates on appeal that his employment is the vehicle to achieve the proposed endeavor. We recognize the distinction; however, the Petitioner overlooks that employment held in furtherance of the proposed endeavor necessarily informs the level of impact the proposed endeavor may have and therefore the broader implications of the proposed endeavor. For instance, the extent to which the Petitioner can carry out his proposed endeavor may differ depending on whether the Petitioner develops and owns an online marketplace for construction services, works as an architect for a well-established firm, or serves as a part of technical consulting team that provides local homes with solar power options. The nebulous nature of the Petitioner's employment prohibits USCIS from determining the broader implications and impact of the proposed endeavor and justifies the Director's conclusion that "the record/RFE response has not offered sufficient specific information regarding the expected contributions from the proposed endeavor."

The Petitioner emphasizes his past achievements as evidence to suggest that he will create a similar impact in carrying out the proposed endeavor. For instance, the Petitioner states that the recommendation letters enumerate the contributions the Petitioner made in his field. However, the record does not reflect that the Petitioner has contributed to his field in a manner commensurate with national importance. Rather, as the Director noted, the Petitioner's accomplishments relate to the results he achieved on specific projects or for specific employers/clients but are not indicative of broader implications to the field.

The Petitioner contends the Director misapplied the requirements of a different visa classification, which correspond to a higher standard. The Director addressed the use of wording from a different visa classification and explained that it served as examples of the types of evidence a petitioner may submit to establish eligibility for a national interest waiver. Rather than requiring the Petitioner to meet a higher standard, the Director elaborated upon evidence that could meet the national interest waiver eligibility requirements because such evidence already contributes to a finding of eligibility under a more restrictive visa classification. Had the Director applied the requirements of a different visa classification, we conclude that such application would be an error. However, the RFE and decision do not reflect a requirement that the Petitioner submit evidence applicable to a different visa classification nor does the decision indicate the Director denied the petition based on not meeting the evidentiary requirements of a different visa classification.

The Petitioner asserts the Director abused their discretion in failing to address all evidence or considering it in the totality of circumstances, citing Buletini v. INS, 850 F. Supp. 1222 (E.D. Mich. 1994) in support. The court in Buletini, however, did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the Buletini decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. The Director's references to "the record" indicate a consideration of the evidence in its totality. The Director discussed similar evidence collectively and structured the written decision in paragraphs about certain categories of evidence, but this appears to be for organization and clarity, rather than indicative of a lack of consideration for the evidence in its totality.

The Petitioner contends the Director ignored the articles it presented regarding the construction industry, green construction, and government initiatives in those areas. We reviewed the Director's

decision and note references to the industry articles as well as President Biden's green initiatives, which demonstrate the Director considered this evidence. Additionally, the Petitioner contends that his initial filing and RFE response contained ample "testimonial and objective documentary evidence to establish the national importance of the proposed endeavor from both an economic and social welfare standpoint." However, the Petitioner does not specifically identify any evidence the Director ignored regarding the economic and social welfare impact of the proposed endeavor. The objective evidence in the record, such as the industry articles and reports, does not reference the Petitioner's specific proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry, which the articles and reports demonstrate, as sufficient to establish the national importance of his proposed endeavor.

When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993). We conclude the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

The Petitioner contends the RFE and decision did not provide specific commentary on the evidence submitted and its deficiencies, stating that the decision presented new issues without providing the Petitioner due opportunity to rectify the perceived discrepancies in the submitted evidence. However, the Petitioner does not provide specific examples of where in the RFE or decision this occurred. Although 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE, neither the Act nor the regulations compels us to do so. Moreover, the Director issued an RFE to which the Petitioner responded, and the decision also provided adequate notice regarding the deficiencies in the petition. Yet, even on appeal, the Petitioner has still not submitted sufficient documentation to establish eligibility or to address the identified deficiencies.

As the Director fully explained, the Petitioner has not established eligibility under the Dhanasar analytical framework. We adopt and affirm the Director's decision and conclude the Petitioner has not established he is eligible for or otherwise merits a national interest waiver.[1]

ORDER: The appeal is dismissed.

[1] 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) (stating that "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).