U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28819066

Date: NOV. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of architecture, 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.

A. Preliminary Issues

As an initial matter, we note that the Petitioner asserts on appeal through counsel that in denying the petition, the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, the Petitioner does not point to specific examples of this within the Director's request for evidence (RFE) and denial. The Petitioner also does not offer a detailed analysis

[2] The Petitioner submitted his diploma and transcripts, as well as an academic evaluation showing that he has the foreign degree equivalent of a U.S. bachelor's degree in architecture. Although the academic evaluation does not specify whether his post-baccalaureate specialization in interior design is equivalent of a U.S. advanced degree, the Petitioner submitted experience letters demonstrating that he has five years of post-baccalaureate, progressive experience in the specialty.

explaining the particular ways in which the Director "imposed novel substantive and evidentiary requirements" in denying the petition, supported by pertinent law or regulation.

The Petitioner generally alleges through counsel that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to the detriment of the [Petitioner]." The standard of proof governing the immigration benefit requests is "preponderance of evidence." *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). To determine whether a petitioner has met his burden under the preponderance standard, we evaluate whether a petitioner's claims are "more likely than not" or "probably" true, but also consider 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 Petitioner does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

In addition, the Petitioner contends that the Director denied "their due process rights and fair treatment" because the Director did not make findings on the second and third prongs of *Dhanasar*'s analytical framework. The Petitioner argues that this "denied the Appellant a fair opportunity to pursue their immigration benefit" and "constitutes a violation of the principles of Due Process and fair treatment as established by USCIS policy, the United States Constitution, and international treaties."

However, we cannot address arguments on the constitutionality of laws enacted by Congress or on regulations. *See, e.g., Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (holding that the Immigration Judge and Board of Immigration Appeals lacked jurisdiction to rule upon the constitutionality of the Act and its implementing regulations); *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 339 (BIA 1991) ("It is well settled that it is not within the province of this Board to pass on the validity of the statutes and regulations we administer.") (citations omitted).

We also note that the Director's request for evidence (RFE) explained the deficiencies and concerns in the Petitioner's initial filing relating to the *Dhanasar*'s second and third prongs and provided a non-exhaustive list of documentation and material that the Petitioner could submit to address such deficiencies. Therefore, the Director followed the applicable regulations and procedure in adjudicating this petition. *See* 8 C.F.R. § 103.2(b)(8).

B. National Interest Waiver

We now turn to the Petitioner's eligibility for the national interest waiver under *Dhanasar*. The Director did not make any determination on substantial merit of the Petitioner's endeavor but concluded that the endeavor is not of national importance under the first prong of the *Dhanasar* framework.[3] On appeal, the Petitioner contends that he submitted sufficient evidence to meet a national interest waiver and the Director erred by not giving "due regard" to the evidence submitted.

[3] Although the Petitioner states that the Director found his endeavor to have substantial merit, the denial decision does not contain any conclusive finding of substantial merit by the Director.

As the *Dhanasar*'s first prong focuses on the specific endeavor that the foreign national proposes to undertake, we will first identify the Petitioner's endeavor as shown on the record. *Dhanasar,* 26 I&N Dec. at 889. Then, we will evaluate the evidence for the endeavor's substantial merit and national importance.

In his personal statement submitted with the initial filing, the Petitioner described his proposed endeavor as follows:

> I intend to continue using my expertise and knowledge, gained through my over 11 years of professional experience, to work as a Chief Executive/Entrepreneur and contribute to the U.S. economy, and its societal welfare, through the development of real estate activities, particularly affordable housing projects. I will do this by developing and expanding my company [redacted] – providing construction management and architectural consulting services focused on building and project costs reduction, increasing competitiveness of U.S. companies.

The Petitioner submitted as initial evidence a business plan for his company, articles on the importance of competent management and the role of chief executive officers, the Bureau of Labor Statistics (BLS) report on top executives and their functions, letters of recommendations, and an expert opinion letter.

In response to the Director's RFE, the Petitioner submitted his "Definitive Statement" which updated his proposed endeavor as follows:

> I intend to continue using my expertise and knowledge, gained through more than thirteen (13) years of experience and services in the field of architecture, to develop an architecture consulting firm, [redacted] in the state of New Jersey. I plan on organizing a company that will provide construction management and engineering services focused on building and remodeling projects with costs reduction. The company will attract investors to invest in economically distressed areas, specifically targeting first aged buildings in suburban districts.

With the RFE response, the Petitioner provided additional letters of recommendations and articles on the value of general operations managers' role, the increasing globalization of U.S. markets, and the importance of foreign companies and investment to the United States, along with other previously submitted evidence.

The record demonstrates that the Petitioner's endeavor is to be a CEO of his own architectural consulting firm that advises other U.S. companies on construction management and engineering services, with a focus on reducing costs in building and remodeling projects. The Petitioner also provided articles and reports generally discussing the importance of effective executives and competent management in business operations. As the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education, we conclude that the endeavor has substantial merit. *Id.*

However, we agree with the Director that the Petitioner has not demonstrated national importance of his endeavor. In determining whether the proposed endeavor has 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." *Id.* Here, the Petitioner's claim of national importance largely relies on the industry reports and articles previously submitted. The Petitioner further asserts on appeal that "contribution of immigrants to entrepreneurship and innovation is essential to long-run sustained economic growth" and that "entrepreneurs are a national assert to be cultivated" as they "create wealth from their entrepreneurial ventures, they create jobs, and the conditions for a prosperous society." Although we recognize the value of competent business management and importance of immigrant entrepreneurs, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor.

In *Dhanasar*, we stated that we would consider the endeavor's potential prospective impact. *Id.* The Petitioner claims that his endeavor "will contribute to the overall growth and competitiveness of the architecture and construction services industry, positioning the United States as a global business hub" and "the creation of jobs, generation of tax revenue, and positive economic effects resulting from the [Petitioner's] entrepreneurial pursuits further underscore the national importance of their proposed endeavor." But upon de novo review, the Petitioner has not provided independent and objective support for such claims.

The Petitioner submitted an expert opinion from [redacted], an adjunct professor of mathematics at [redacted] College of New York. [redacted] asserts that the Petitioner's proposed endeavor "of providing his services as a chief executive officer" can "help U.S. companies to find the best solutions and improve productivity while reducing costs" and "generate great impact in the U.S. companies interested in his services." [redacted] also claims that the Petitioner's "track record of success in the field of architecture can significantly benefit the United States" and generally discusses the rising revenue and projected growth of the architectural industry. While the expert opinion praises the Petitioner's expertise both as a businessman and an architect, it does not provide any persuasive and relevant details about the Petitioner's endeavor or its specific impact, such as any projected economic impact or job creation attributable to the Petitioner's operation of his own architectural firm in the United States.

In addition, the Petitioner's resume and recommendation letters only address his past accomplishments as an architect and an entrepreneur, but they do not demonstrate national importance of his endeavor's "potential prospective impact." Although we acknowledge that the Petitioner made valuable contributions to his employers in the past, these documents pertain to the second prong of *Dhanasar*, whether he is well-positioned to advance his endeavor, and do not support the claims of the endeavor's national importance.

Furthermore, the record does not suggest that the Petitioner's business management abilities or methodologies somehow differ from or improve upon those already available and in use in 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. The expert opinion and recommendation letters discuss the Petitioner's successful handling of past projects, his expertise

as an architect, or his work ethics, but do not address the Petitioner's proposed endeavor or explain how the endeavor will substantially benefit the United States.

We also reviewed letters of intent in which three interior designers in New Jersey shared their positive experiences in employing the Petitioner's services and expressed interest in working with him in the future. Although these letters demonstrate that the Petitioner's services provided value to these interior designers, they do not demonstrate that his endeavor or his methodologies will impact more than just the clients that he will serve, rising to the national importance contemplated by *Dhanasar*. 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.

In the business plan, the Petitioner asserts that his company "will create several direct and indirect jobs and provide affordable housing for U.S. citizens." The financial analysis portion of the plan projects that the company will create 44 direct jobs with a total wage payment of $8,199,873 and estimated tax generation of $2,899,680 by the fifth year. 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 New Jersey or the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also claims that his company "will attract investors and invest in economically distressed areas" and help with the housing shortage in New Jersey. However, the Petitioner has not provided independently corroborating evidence to substantiate that his company would hire significant population in the economically depressed areas of New Jersey or how his investment would specifically impact the disadvantaged region. *See id.* The Petitioner designates [redacted] as the company's headquarter, asserting that the city is one of the economically depressed areas according to the Distressed Communities Index (DCI) score published by the Economic Innovation Group, but the Petitioner offers only generalized statements about the number of homeless students and housing deficit in New Jersey overall and has supported his claims of the endeavor's specific impact to the economically disadvantaged areas independent of his business plan.

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 conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.