U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28962854

Date: NOV. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an engineer and drone operator, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A United States 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. *Id.*

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a 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.

II. ANALYSIS

The Director found that the Petitioner qualifies for the EB-2 classification as an advanced degree professional, based upon obtaining the foreign equivalent of a bachelor's degree in electronics engineering and at least five years of progressive experience in the specialty. The Director also found that the Petitioner established the substantial merit of the proposed endeavor and that he is well-positioned to advance it. However, the Director determined that the Petitioner did not demonstrate the national importance of the proposed endeavor.[2] On appeal, the Petitioner submits a brief in which he asserts that he has established eligibility for a national interest waiver.

The Petitioner proposes to promote and develop novel methods for the use of industrial drones in practical commercial applications. The Petitioner states that to pursue this endeavor he will work as a consultant to promote drones for such purposes as site surveying and topography, the generation of contour maps in construction and mining, obtaining real crop data in agriculture, medical purposes in delivering supplies, and telecommunications.

In determining that the Petitioner did not establish the national importance of his proposed endeavor, the Director discussed the Petitioner's personal statement, reference letters, and the documents submitted regarding the drone industry. The Director found that the Petitioner's personal statement and evidence of his employment history did not establish that the impact of the Petitioner's endeavor would reach beyond the Petitioner's employer or clients to the broader field. Similarly, the Director concluded that the reference letters, although they describe the Petitioner as competent and capable, did not establish that the proposed endeavor would extend beyond the Petitioner and his employer. The Director also concluded that the documents regarding the drone industry and its effect on the economy help establish the importance of the industry, but not of the proposed endeavor itself, as required by *Matter of Dhanasar*. Overall, the Director concluded that although the record shows that the Petitioner has experience and a measure of accomplishment in his field, it did not establish the endeavor's national importance.

On appeal, the Petitioner asserts that the Director conflated the Petitioner's proposed employment with the proposed endeavor. The Petitioner also asserts that the Director did not sufficiently analyze the evidence or explain why the evidence is deficient. Additionally, the Petitioner claims that the Director did not examine the entirety of the evidence in the record; the Petitioner specifically points to the articles submitted and claims that these documents were overlooked by the Director. The Petitioner

[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).

[2] The Director did not make a finding as to whether the Petitioner established the third *Dhanasar* prong—that, on balance, waiving the job offer requirement would benefit the United States.

contends that he provided sufficient evidence and information to establish the endeavor's national importance by a preponderance of the evidence, and that the denial is therefore contrary to precedent case decisions and USCIS policy.

As to the Petitioner's claim that the Director conflated the proposed endeavor with the proposed employment, the Petitioner refers to the Director's statement that the Petitioner intends to "work as a drone operator." The Petitioner states that the proposed employment is "merely held in furtherance of the proposed endeavor, not the proposed endeavor itself." The Petitioner claims that his "employment as a construction consultant and a licensed drone pilot should accordingly only be considered as a vehicle by which to achieve or otherwise further" his endeavor. On appeal, the Petitioner states that the proposed endeavor is to "provide specialized consulting services," to "positively impact the construction sector," and to "promote and develop novel methods for the use of industrial drones."

Even were we to agree with the Petitioner that there is a distinction between the endeavor and employment held in furtherance of the endeavor, the Petitioner has not established that this distinction would impact the national importance analysis in this case. In determining whether a proposed endeavor has national importance, we must consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not explained how we would assess the potential impact of this type of endeavor without considering how the Petitioner proposes to implement it. The Petitioner submitted personal statements, industry reports and articles, and letters of recommendation in support of his endeavor's national importance. The Director considered this evidence and determined that it did not demonstrate that the impact of the Petitioner's activities stands to extend beyond the Petitioner's clients or employer to impact the field on a level commensurate with national importance. Regardless of the language the Director used to summarize those activities, the Petitioner's claim that his proposed endeavor and proposed employment differ do not establish that the Director erred in this analysis, nor that the proposed endeavor is in fact nationally important.

Similarly, we are not persuaded by the Petitioner's claim that the denial is deficient because the Director did not review the entirety of the evidence in the record. The Petitioner states that the failure to consider all the relevant evidence submitted has been found to be an abuse of discretion and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mi. 1994). While we agree with that an adjudicator should consider the relevant evidence in the record,[3] we also note that U.S. district court decisions, such as the one the Petitioner cites, are not binding precedential authority. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). More importantly, however, the Petitioner does not sufficiently support the claim that there was relevant evidence that the Director failed to consider.

Although the Petitioner repeats several times that there was "ample evidence" which was not considered by the Director, the only example the Petitioner provides of such evidence are the articles and reports submitted about the drone industry and the construction industry. The Petitioner specifically cites to two articles about the uses of drones in construction and infrastructure, an article from the Construction Association about the importance of the construction industry to the U.S. economy, a Forbes article about sustainability in the construction industry, and an executive order

[3] *See* 8 C.F.R. § 103.2(b)(1).

regarding clean energy jobs and sustainability. The Petitioner asserts that this "objective, documentary evidence" establishes the proposed endeavor's national importance but was "ignored" by the Director.

But the Director stated that the Petitioner submitted numerous documents regarding the drone industry and concluded that this evidence related only to the field in general and therefore did not establish the specific endeavor's national importance. The fact that these articles are not listed by name is not indicative of a failure to consider the evidence. *See Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention."). *See also Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (joining the Seventh and the Federal Circuit Courts of Appeals in presuming that the Board reviewed all of the evidence of record). We conclude that the record reflects the Director's consideration of the evidence in totality even though the Director did not address each piece of evidence individually. Therefore, we do find sufficient support for the Petitioner's claim that the Director failed to consider the entirety of the evidence in the record.

Additionally, as the Director noted, the reports and articles that the Petitioner discusses here relate to drones, the construction industry, and the U.S. economy in general, not to the Petitioner's specific proposed endeavor. In determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner does not explain how these articles and reports establish the prospective impact of his specific endeavor. As such, we conclude that the articles and reports do not establish that the Petitioner's proposed endeavor has national importance.

Similarly, as to the Petitioner's claim that the Director did not analyze the evidence or sufficiently explain the basis for denial, we conclude that this claim is not supported by the record. Rather, upon de novo review, we conclude that the Director's decision reviewed, discussed, and analyzed the Petitioner's documentation consistent with our precedent decision in *Matter of Dhanasar*. On appeal, rather than specifically identifying any errors in law or fact in the decision, the Petitioner makes broad assertions that the Director did not properly analyze the evidence and that he has established eligibility. These assertions, however, are not supported by the record, do not overcome the basis for the denial, and are insufficient to establish the proposed endeavor's national importance.

Because the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs. *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 alternative issues on appeal where the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.