U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26480792

Date: OCT. 30, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks second preference immigrant classification as an advanced degree professional, 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 Nebraska Service Center denied the petition, concluding the Petitioner was ineligible for a national interest waiver. Later, the Petitioner filed a motion to reopen with the Director. The Director considered the motion but ultimately redenied the petition, determining that while the Petitioner satisfied *Dhanasar's* second prong, he did not meet the first and third prongs of the *Dhanasar* framework and was therefore ineligible for a national interest waiver as a matter of discretion. 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, petitioners must 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. In addition, petitioners must show the merit of 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 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

On appeal the Petitioner contends through counsel that the Director determined he qualifies for the EB-2 classification as an advanced degree professional. However, the Director made no determinations regarding the Petitioner's eligibility for the EB-2 classification in his denial decisions. Counsel's brief also refers to the Petitioner as '[redacted]' without explanation, while the rest of the record indicates that his name is '[redacted]' [Mr. T-]. Counsel also mistakenly asserts that "USCIS erred in *not* finding that the [Petitioner] is well positioned to advance his endeavor," even though the Director found in his most recent denial order that the Petitioner *is* well positioned to do so under *Dhanasar's* second prong. Thus, we must question the accuracy of counsel's assertions on appeal and whether the information provided is correctly attributed to this particular Petitioner.

Nonetheless, based on our review of the record we determine that the Petitioner qualifies as a professional holding the equivalent of an advance degree under 8 C.F.R. § 204.5(k)(3)(i)(B). As our determination is not dispositive of the appeal, we need not remand the matter to the Director in order to decide on the underlying immigrant classification. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the following reasons, we agree with the Director's ultimate conclusion that he has not done so.[2]

Regarding the national interest waiver, the first prong relates to the substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner indicated in his Application for Alien Employment Certification, Form ETA-750 Part B, and in part 6 of the petition that he will be employed as a "manufacturing engineering manager." The Director ultimately determined that the Petitioner's endeavor – performing services as a mechanical engineering manager - has substantial merit, but that he did not satisfy the national importance requirement. We agree.

In the petition the Petitioner initially states through counsel that "the totality of evidence in this case establishes that the [Petitioner's] past record justifies projections of future benefit to the the United States, establishing that his prospective employment will be in the national interest of the United States," but did not otherwise describe what his specific proposed endeavor would entail.

In response to the Director's request for evidence (RFE), the Petitioner notes that he seeks employment in the United States as a manufacturing engineer manager and asserts his occupation "is a significant source of economic growth [and] continues to be critical to the United States, as its health has a significant impact on the economy in various ways." He further contends:

> By carrying out [his] proposed endeavor of being an independent business owner in the field of [m]echanical and [e]lectrical [e]ngineering in the United States, [he] will help to contribute to the country's economy. Through the execution of his proposed endeavor, [he] will directly help create additional jobs for American workers, a clear and substantive impact that speaks to the national importance of said endeavor. . . . [His] work is clearly and directly related to a number of government initiatives,

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

> programs, and departments, of which indicate, that the company's work improves the quality of these American households and is therefore of national importance and will be in the field of substantial merit.

The Petitioner references his "personal plan," among other things, as evidence to demonstrate the national importance of his proposed endeavor. He implies that he intends to operate his own business. We have carefully reviewed this documentation and observe that his personal plan does not outline or discuss plans to operate a business. In part 1.1 of his plan which is entitled "[Mr. T-'s] Endeavor," he indicates that his "goal is to provide expert manufacturing engineering services to companies," asserting that "as a highly experienced Plant and Site Engineering Manager, [his] services will contribute to the economic success of businesses and projects." The next thirteen pages of his plan are devoted to outlining his academic and experiential qualifications, followed by twelve pages that put forth information about the importance of the manufacturing engineering industry to various aspects of the U.S. economy.

While the Petitioner also provides copies of his payroll records for his employment by organizations abroad in support of his plan, the plan does not include any information that suggests he intends to run his own manufacturing engineering firm in the United States. Here, the Petitioner asserts that his endeavor will involve "being an independent business owner," but his personal plan and the other supporting evidence does not substantiate his assertions. The Petitioner must resolve this inconsistency and ambiguity 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).

On appeal, the Petitioner makes no mention of his previously stated intention to be an independent business owner. *Id.* Instead, he discusses aspects of his previous and ongoing employment with various manufacturing firms, asserting "the United States would greatly benefit from the expertise and skills of an experienced manager such as [the Petitioner], who has extensive experience in manufacturing engineering. His work [has] national importance for the United States." The Petitioner's knowledge, skills, and work experience 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 that he proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner also emphasizes that he is currently employed as a plant manager for a U.S. firm and leads a staff of five managers overseeing areas such as production, engineering, supply chain, QA & HR. Although the Petitioner's statements reflect his intention to continue working in his field in the United States, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that 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. Similarly, the record does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently impact U.S. interests or his industry more broadly at a level commensurate with national importance. In addition, he has not demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

The Petitioner reiterates on appeal that the evidence in the record about U.S. government initiatives relating to his industry show that his "proposed endeavor impacts a matter that a government entity has described as having national importance." We conclude that this material does not focus on the national importance of the Petitioner's specific endeavor, but instead focuses on the economic and societal contributions of his industry to the nation as a whole. The fact that a petitioner is qualified for and may accept a position in an industry or sector that is the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. The Petitioner must still demonstrate the potential prospective impact of his specific endeavor in that area of national importance, and here he has not met that burden.

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. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Therefore, we decline to reach whether he meets the other prongs under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

We conclude that the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.