U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28428594

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks classification as either a member of the professions holding an advanced degree or an individual of exceptional ability. 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 that is attached to this EB-2 immigrant 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 Petitioner qualifies for the EB-2 classification as an advanced degree professional but 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 immigrant 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, 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 his bachelor's degree in civil engineering from Brazil, obtained in 2006, followed by more than five years of progressive work experience as an engineer. The Director also found that the Petitioner established the substantial merit of the proposed endeavor. However, the Director determined that the Petitioner did not demonstrate the national importance of the proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States.[2]

The Petitioner proposes to consult with energy companies to "implement clean energy throughout the nation." The Petitioner states that he will establish a consulting company, [redacted] to work with energy companies in pursuing clean energy projects. In his personal statement, the Petitioner refers to a government initiative from the U.S. Department of Energy to invest in developing offshore wind energy. The Petitioner suggests several ways that he could offer his expertise to energy companies given this initiative, such as with conference presentations, completing market research, assessing the output of energy systems that are installed, and ameliorating waste generated from wind turbine projects.

In determining that the Petitioner did not establish the national importance of his proposed endeavor, the Director found that the Petitioner had not demonstrated that its impact would sufficiently extend beyond the organization and the individuals it would serve to reach the industry broadly. The Director noted that in determining national importance, USCIS considers the specific endeavor rather than the importance of the field, industry, or profession in which the individual will work. The Director also concluded that the Petitioner had not established that the benefits of his proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. The Director noted that the Petitioner provided industry reports and articles about the benefits of renewable energy and that his personal statement reflected his intention to offer his expertise and knowledge to promote renewable energy. However, the Director concluded that this information and evidence was not sufficient to demonstrate that the prospective impact of the endeavor rises to the level of national importance. Finally, the Director discussed the Petitioner's business plan, noting that it included the company's mission, vision, objectives, goals, and potential future clients,[3] but did not contain sufficient information to establish national importance, such as information regarding the workers that

[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 that he is well-positioned to advance the proposed endeavor, the second prong of the *Dhanasar* framework.

[3] The list of potential clients appears to be a list of the types of companies with which the Petitioner would like to work. The record does not contain evidence that the listed companies, including General Electric, Shell, and Siemens, have expressed interest in working with the Petitioner as part of his proposed endeavor.

the Petitioner intends to employ, the business activity that may be conducted with potential clients, and the positive effects that the company may have on the nation.

On appeal, the Petitioner claims that the Director's analysis reflects a "misunderstanding and misapplication of law." As an example of this, the Petitioner claims that the Director improperly conflates the Petitioner's proposed endeavor with his proposed employment. The Petitioner also claims that the Director did not examine the entirety of the evidence presented and did not discuss all of the evidence submitted. Finally, the Petitioner asserts that the Director used an incorrect standard to assess the potential economic impact of the proposed endeavor, and claims that the evidence does in fact establish the substantial positive economic impact of the proposed endeavor.

As to the Petitioner's claim that the Director conflated the proposed endeavor with the proposed employment, the Petitioner states on appeal:

> *My proposed endeavor is to build on my extensive experience with the execution of structural wind turbine on shore and offshore foundation designs with international standards, construction and site inspection of eolic park, electrical substation, high and medium voltage transfer lines, in order to provide greater clean energy capacity to the country and meet the demand that is linked to growth.*

The Petitioner goes on to state:

> To clarify, the Petitioner intends to begin a business, [redacted] that will partner with large companies and construction projects in which he would provide inspections, designs, company presentations at conferences within the field, among others, with the intent of meeting the demands presented by the government implement (sic) renewable energy within the U.S., through the application of his knowledge and expertise regarding the inspection and design of wind turbines on and offshore, compliance with international standards, construction and site inspection, and electrical outfitting in the energy field.

However, this statement does not clarify how the Director improperly characterized the Petitioner's proposed endeavor. The decision states that the Petitioner is a civil engineer who intends to work in the field of renewable wind energy, that he seeks to establish an organization that would work in this field, and that he intends to provide his experience and knowledge to promote renewable energy. On appeal, the Petitioner does not clearly explain how his proposed endeavor differs from his proposed employment nor how the Director mischaracterized or misunderstood the proposed endeavor. Upon review of the record, we generally agree with the Director's characterization of the proposed endeavor as demonstrated in the record. Moreover, even if the Petitioner did demonstrate a meaningful difference between his proposed endeavor and proposed employment, the Petitioner does not explain how this distinction would help establish the proposed endeavor's national importance.

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. In support of this claim, the Petitioner states that the failure to consider all of the relevant evidence submitted has been found to constitute 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,[4] 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 his claim that there was relevant evidence that the Director did not consider.

The Petitioner bases this claim on the fact that the Director did not explicitly name in the decision some of the articles and website printouts in the record, such as the evidence from the U.S. Department of Energy website regarding the development of offshore wind turbines, evidence relating to the Paris Agreement, and a statement from the White House regarding emissions reduction goals. But the Director acknowledges that the Petitioner submitted industry reports and articles, and the decision overall describes the Petitioner's proposed endeavor in detail, cites to specific information from the record, and describes the contents of the record accurately. 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). Therefore, we do find sufficient support for the Petitioner's claim that the Director failed to consider all of the evidence in the record.

Moreover, the reports and articles that the Petitioner discusses here relate to renewable energy in general, not to the Petitioner's specific proposed endeavor. We agree with the Director that 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. As such, we conclude that the articles and reports do not establish that the Petitioner's specific proposed endeavor has national importance.

Finally, as stated above, the Petitioner claims that the Director used the wrong standard in assessing the economic impact of the proposed endeavor. The Petitioner notes that *Dhanasar* states that an endeavor may have national importance if it has "significant potential to employ U.S. workers," *id.* at 890, but the decision find that the endeavor would not "employ a significant population of workers." The Petitioner states that this difference in the language of the decision as compared to the language of *Dhanasar* has imposed a novel, arbitrary, and undefined standard on the petition. The Petitioner also asserts that the record contains ample documentation to corroborate the economic benefits of the proposed endeavor.

While the decision language here does not quote *Matter of Dhanasar* precisely, we disagree with the Petitioner's characterization that this slight language change reflects the imposition of a novel and arbitrary standard that departs from *Matter of Dhanasar*. This phrase is only part of the Director's

[4] *See* 8 C.F.R. § 103.2(b)(1).

analysis as to the potential economic impact of the proposed endeavor, which overall is in line with the standard expressed in *Matter of Dhanasar*. The Director also notes that the Petitioner's business plan does not describe the business activity that it will conduct with its clients, nor state an intention to operate in an economically depressed area, nor provide other information to establish the positive effects the company would have on the nation. Moreover, neither the Petitioner's personal statements nor his business plan describe a plan to employ any U.S. workers. The Petitioner asserts on appeal that he provided "ample documentation" to establish his endeavor's positive economic effects, but he does not address these specific deficiencies noted by the Director. Upon review of the record, we agree with the Director that the Petitioner has not established that the proposed endeavor has the potential for positive economic effects commensurate with national importance.

The Petitioner's claims on appeal do not overcome the basis for the Director's findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor. 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* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and thirds *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 requisite first prong of the *Dhanasar* analytical framework. 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.