U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29849641

Date: APR. 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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 pursuant to 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed

endeavor; and (3) 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. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the proposed endeavor as a plan to "serve as [s]enior [t]echnical [m]anager of [e]ngineering and [p]rocesses" at his newly created company that will provide consulting services to companies operating in the U.S. mining industry. The Petitioner submitted a business plan that asserts his company will "provide the latest technology, innovative and sustainable solutions to businesses in the U.S. [and] aid American companies in their expansion to the Latin American mining market." The business plan states that the company's target clients will be mining companies located in Arizona, Nevada, Colorado, South Carolina, and Alaska. The business plan indicates that, in addition to employing the Petitioner, the company will hire one metallurgical engineer in the first year of operation, one mechanical engineer in the second year of operation, and one hydraulic engineer in the third year of operation, with no additional workers hired in either the fourth or fifth years of operation, for a total of four workers in the foreseeable future.

Documents in the record, such as a commercial contract and information the Petitioner submitted to the State of Florida, Department of State, Division of Corporations, establish that the Petitioner's company operates at a location matching the private residence he provided as his address of record, located in [redacted] Florida. The Petitioner asserted in response to the Director's request for evidence (RFE) that he "will actively recruit professionals from the state of New Mexico, where [his company] will establish a branch of our consultancy . . . driven by the fact that New Mexico is a strategic location, given that it is a prominent mining region, and that it is particularly near major global copper mining operators." The record does not reconcile why the business plan omitted New Mexico as a location for target clients. The record also does not reconcile whether the professionals the Petitioner will "actively recruit" from New Mexico are among the total of three workers, other than the Petitioner, the business plan indicates the company will hire in the foreseeable future. Furthermore, the record does not reconcile whether the Petitioner and his company's three other employees would work in the Petitioner's private residence in Florida, in New Mexico, remotely at clients' places of business, or elsewhere.

The record also contains generalized information regarding the mining industry and business, the Petitioner's academic and work experience, and letters of recommendation.

The Director acknowledged that the proposed endeavor, as described in the record, has substantial merit. The Director also concluded that the Petitioner is well positioned to advance the proposed endeavor, as contemplated by the second *Dhanasar* prong. However, the Director noted that the record in general, and the business plan more specifically, primarily addresses generalized information regarding the mining industry and business, and the Petitioner's academic and work experience, rather than establishing how the proposed endeavor may have national importance. The Director observed, "The [P]etitioner has not established that [his] proposed endeavor in the United States will have a broader impact on the field outside of [his] prospective company and/or clients." The Director also acknowledged that an opinion letter asserts that the endeavor has significant potential to employ U.S. workers; however, the Director also observed that the record does not substantiate the letter writer's claims. Accordingly, the Director concluded that the record does not establish the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. The Director further concluded that the record does not satisfy the third *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

On appeal, the Petitioner summarizes his prior academic and work history, he reiterates generalized information regarding the mining industry and business, and he asserts that his statement submitted in response to the Director's RFE, the company's business plan, three opinion letters, documentary evidence of the Petitioner's company's contracts, and letters of support establish that the proposed endeavor has national importance.

In determining 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 id.* at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that information in the record—whether in the Petitioner's RFE statement, the business plan, opinion letters, letters of support, or otherwise—that discusses the Petitioner's prior academic and work history pertains to whether the Petitioner is well positioned to advance the proposed endeavor, as contemplated by the second *Dhanasar* prong. *See id.* However, because the Petitioner's prior academic and work history does not inform how "the specific endeavor that the [noncitizen] proses to undertake" may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," his prior academic and work history is immaterial to determining whether the specific, prospective, proposed endeavor may have national importance, as contemplated by the first *Dhanasar* prong. *See id.* Relatedly, although documentary evidence of contracts pertain to interest in the Petitioner's company's services and, thus, whether the

Petitioner is well positioned to advance the proposed endeavor, the contracts do not establish how the proposed endeavor may have national importance. *See id.*

We next note that generalized information in the record—whether in the Petitioner's RFE statement, the business plan, opinion letters, letters of support, or otherwise—regarding the mining industry and business pertains to issues such as whether the proposed endeavor has substantial merit, as contemplated by the first *Dhanasar* prong. *See id.* However, because generalized information regarding the mining industry and business does not inform how "the specific endeavor that the [noncitizen] proses to undertake" may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," such generalized information does not establish how the specific proposed endeavor may have national importance, as contemplated by the first *Dhanasar* prong. *See id.*

Aside from their focus on the Petitioner's prior academic and work history, and on generalized information regarding the mining industry and business, neither the Petitioner's RFE statement nor the business plan otherwise establish how the proposed endeavor may have national importance. The Petitioner references extant and potential "state-of-the art and highly specialized emerging technologies" that his mining industry consulting company will advise its clients and customers to use; however, the record does not establish how the proposed endeavor may be responsible for those technologies, apparently developed by other engineers not among the workforce of four employees, including the Petitioner. Relatedly, the Petitioner's RFE statement and the business plan indicate that the endeavor will entail advising the Petitioner's company's clients and customers; however, the record does not establish how the company's consulting activities will extend beyond benefitting the Petitioner and his company, and the company's clients and customers receiving its services, to amount to the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances," as contemplated by *Dhanasar*. *See id.* In turn, the Petitioner's RFE statement and the business plan indicate that the Petitioner's company will employ himself and three other engineers for a total of four employees in some unspecified location—apparently at the Petitioner's own private residence—and the Petitioner asserts that his company "will lead to the creation of additional 16 indirect jobs according to multipliers provided by [the Economic Policy Institute]"; however, the record does not establish how those four direct and 16 indirect jobs in unspecified locations demonstrate "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," as contemplated by *Dhanasar*. *See id.*

Next, the Petitioner asserts on appeal that he "respectfully hold[s] a different opinion than USCIS' conclusion that the opinion letters did not demonstrate the national importance of [his] proposed endeavor." The Petitioner adds that he values the opinion letters "because they provide an unbiased and informed assessment of [his] work and its potential impact on the nation." He believes that "[t]he expertise and stature of these individuals lend weight to [his] qualifications and affirm the significance and impact of his work within the country." However, despite expressing his disagreement on appeal, the Petitioner does not identify any particular information in any of the opinion letters that overcomes the Director's observations and conclusions about them. As discussed above, the record does not support the conclusion that the proposed endeavor's employment of four total workers—including the

Petitioner—at some unspecified location that appears to be the Petitioner's private residence in [redacted] Florida, with the potential to create 16 indirect jobs also in unspecified locations, demonstrates "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," as contemplated by *Dhanasar*. *See id.* Thus, the letters that opine, without substantiation, that the proposed endeavor has significant potential to employ U.S. workers cast substantial doubt on the credibility of the authors, and on the reliability and sufficiency of their opinions. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition). Particularly in light of the opinion letters' minimal reliability and sufficiency, they do not otherwise establish how the proposed endeavor may have national importance, and the Petitioner does not articulate any error the Director may have made regarding the opinion letters.

Next, as addressed above, the letters of support in the record generally address the Petitioner's prior academic and work history and provide generalized information regarding the mining industry and business. They also generally assert that the Petitioner has benefitted or has the potential to benefit particular companies with whom his company contracts. However, the letters of support do not establish how the specific, prospective endeavor the Petitioner proposes to undertake may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.