U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30354578

Date: APR. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a trade specialist, seeks employment-based second preference (EB-2) 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 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). 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 did not establish that he is eligible for or otherwise merits 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, 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 for the underlying classification, 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 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 USCIS may, as 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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that determination. However, the Director found the record did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further determined that the Petitioner did not establish that he is well positioned to advance the proposed endeavor, and 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. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[2]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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. .

The Petitioner proposes to work in the United States as an independent consultant specializing in international business and trade. The Petitioner's proposed endeavor statement states:

> My proposal is to build on my extensive experience . . . to develop and implement comprehensive and customized international business plans and international trade strategies for U.S. small and medium-sized enterprises (SMEs) in order to improve their profitability, competitiveness, and adaptability to global markets. Specifically, I will analyze global economic trends, examine the impact of international trade policies on businesses, explore new market entry strategies and factors that drive economic growth for SMEs. My work will result in expanding their sales abroad, diversifying their supply chain and achieving economic growth. In addition, as my work will contribute to optimize trade flows between the world

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

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

> and the United States, my work will enhance U.S. international competitiveness and contribute the [sic] U.S. economic development.

We agree with the Director that the Petitioner's proposed endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director determined the record did not establish the proposed endeavor has national importance. The Director found that the record does not show that the Petitioner working as an independent consultant specializing in international trade and business "stands to sufficiently affect or advance the field or industry more broadly . . . . Nor has the [P]etitioner sufficiently demonstrated the particular work he proposes to undertake offers original innovations that contribute to the advancements [sic] his field of endeavor, or otherwise has broader implications in his field."

On appeal, the Petitioner argues that the Director's decision "contains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." Additionally, the Petitioner contends that he submitted "ample evidence across all filings that explains how his endeavor will impact [small and medium-sized companies] in order to improve their competitiveness, profitability, and adaptability to global markets." He argues that the evidence demonstrates "how [his] endeavor will impact small businesses in a matter that is beneficial to the overall economy." He further claims his proposed endeavor is of national importance "because it aims to support the economic recovery of the United States by developing novel and unique business strategies aimed at small and medium-sized companies . . . with special emphasis on international trade." He notes that "[b]y strengthening their competitiveness and expanding their positioning in foreign markets, [the Petitioner] is indirectly contributing to strengthen and diversify U.S. supply chains."

The Petitioner contends the Director did not fully examine and consider the totality of the evidence in in the request for evidence and in the denial decision amounting "to a critical error in the adjudicative process," citing Buletini v. INS, 850 F. Supp. 1222 (E.D. Mich. 1994). The court in Buletini did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the Buletini decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993). We conclude that although the decision does not individually analyze each piece of evidence, it reflects the Director's reasoned consideration of the evidence, as discussed below.

To determine whether the Petitioner has met his burden under the preponderance of the evidence standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Matter of Chawathe, 25 I&N Dec. at 376; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, we conclude that the Director, in evaluating whether the Petitioner had established that he meets the first prong of the Dhanasar framework, weighed all the evidence but determined that the evidence overall lacked probative value. Upon de novo review, the

Petitioner has not established that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong.

The Petitioner claims that his proposed endeavor has national importance because it will contribute to the U.S. economy by providing individualized solutions and potential business opportunities to small and medium-sized businesses in their international trade and business endeavors. To support his statements, the Petitioner argues that he submitted industry and U.S. government source materials which provide "objective and probatory evidence" demonstrating "the national impact of his endeavor." He claims the industry articles and U.S. government reports show the importance of selling products and services outside the United States to benefit U.S. wages and the economy. He points to U.S. government initiatives aimed at promoting small businesses, entrepreneurs, international trade, and improved supply chains.

The Petitioner quotes the Director's request for evidence notice to argue that the Director requested the evidence he submitted to show his proposed endeavor's national importance. The Petitioner claims that he provided evidence showing his endeavor "impacts a matter that a government entity has described as having national importance or is subject [sic] of national initiatives." (emphasis omitted). The Petitioner contends that his reply to the request for evidence included "several government initiatives and regulations that target and further efforts that are tightly linked with the proposed undertaking." For instance, he submitted U.S. government initiatives emphasizing the need to revitalize the economy post-COVID-19 through job creation; supporting small and medium-sized businesses; exporting products and services; and enhancing production supply chains. He emphasizes that the articles "demonstrate an interest from the United States in harnessing the Petitioner's knowledge and expertise." In addition, he maintains that his "proposed endeavor will benefit small and medium sized businesses that are . . . the backbone of the U.S. economy. By furthering these businesses, the Petitioner is directly contributing not only to their clients but also to the economic furthering of the Nation."

The importance of the U.S. government initiatives is not in dispute, but their overall significance does not establish the national importance of the Petitioner's proposed endeavor in particular. International trade, strong supply chains, and support of small businesses are important to the U.S. economy, but it does not follow that one individual providing international trade and business consulting advice to small and medium-sized business clients has national importance. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." See Matter of Dhanasar, 26 I&N Dec. at 889. The Petitioner does not quantify the proposed endeavor's expected impact in the identified areas of concern, or provide objective, probative evidence to support his contentions. Although the Petitioner has shown that international trade and supporting small businesses are nationally important issues, he has not demonstrated the potential prospective impact of his specific endeavor to such nationally important matters.

The Petitioner further takes issue with the Director's assessment of evidence. The Petitioner quotes the denial decision: "'Nor has the [P]etitioner sufficiently demonstrated the particular work he proposes to undertake offers original innovations that contribute to the advancements [sic] his field of endeavor . . . . .'" (emphasis omitted). He argues this language is used for a different visa

classification, namely under the EB-1 visa classification for aliens of extraordinary ability and should not be applied to this petition. He contends the Director imposed "a higher standard of law not in line with the requested classification" which served to the direct disadvantage of the Petitioner and evidences the abuse of discretion inherent in the [request for evidence] and [d]enial." We disagree with the Petitioner that the Director imposed a higher standard of proof.

As indicated by the Director, the Petitioner has not shown that his proposed endeavor has broader implications, either economically or from innovations that advance his field that would sufficiently extend beyond his independent contractor work and his clients to impact his field more broadly. The Petitioner's statement indicates he will provide "comprehensive and customized" international trade and business consulting advice to small and medium-sized businesses. But the Petitioner has not suggested or shown that his solutions or methodologies somehow differ from or improve upon those already available and in use in the United States, as contemplated by Dhanasar. Id. at 889 (observing that "[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"). The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Outside of the Petitioner's general claims in his statements, the record does not suggest that the Petitioner working as an international business and trade consultant would impact the international trade and business field more broadly. Also, the Petitioner has not provided corroborating evidence to support his claims that his business' activities stand to provide substantial economic benefits to the United States.

The Petitioner further argues the Director's decision had a "confusing assessment" by addressing a letter of intent in the analysis of *Dhanasar's* first prong. Instead of analyzing the letter in the determination of the national importance, he argues the letter is "suited for the well-positioned criterion." We acknowledge evidence from potential clients and persons of interest for the Petitioner's proposed endeavor relates to *Dhanasar's* second prong which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar at 889. However, given that much of the evidence submitted in support of Dhanasar's first prong addresses the industry or profession in which the Petitioner intends to work without discussing his specific proposed endeavor and its specific impact, the Director properly reviewed the totality of evidence on record, including the letter of intent to determine whether the endeavor has national importance due to its broad impact in the field. Furthermore, the Director did consider multiple letters of intent in the analysis of *Dhanasar's* second prong.

The Petitioner has not demonstrated that his proposed endeavor extends beyond his work as an independent contractor and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as an international trade and business consultant offers innovations that contribute to advancements in the international trade and business industry or otherwise has broader implications for his field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed international trade and business consulting work and the claimed results.

The documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, and

therefore he has not demonstrated eligibility for a national interest waiver. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve his appellate arguments regarding his eligibility under the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "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 established eligibility under the requisite first prong of the Dhanasar analytical framework, he is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.