U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26399839

Date: APR. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a construction estimator and supervisor, 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).

The Director of the Texas Service Center denied the petition, concluding the record did not establish the Petitioner's eligibility under the Dhanasar framework. 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 as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and Immigration Services (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;

[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).

- 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 determined the Petitioner qualifies for the underlying EB-2 classification. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual 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. Dhanasar, 26 I&N Dec. at 889.

Initially, the Petitioner stated, "[m]y area of focus as a Construction Estimator and Construction Supervisor is largely on impact projects. Such projects include the building of schools, housing, medical centers, connecting roads, bridges, and public market projects . . . ."[2] In response to the Director's RFE, the Petitioner described his endeavor "as a self-employed architectural and engineering manager, offering my services as a contractor consultant. I will set up an architectural, engineering, and construction firm, as my vehicle of operation." While it is a more appropriate consideration under prong two of the Dhanasar framework,[3] we nevertheless conclude the record does not support a finding that the Petitioner is qualified to work as either an engineer or an architect, much less a manager of them. The Petitioner's education is in building and quantity surveying, not engineering. Further, although the Petitioner provided evidence that he is currently pursuing a master's degree in architecture, the record does not reflect he has completed this education.

To support a finding of his endeavor's national importance, the Petitioner emphasized the importance of construction, infrastructure, and affordable housing. He provided documents discussing government initiatives to address housing and infrastructure concerns. Other articles and reports highlight the economic importance of roads and bridges, the shortage of skilled workers and engineers, the housing supply deficit and its economic effects, and the increased cost of building materials. Despite these realities, the record contains insufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to the Petitioner's specific work. The record does not show benefits to the U.S. regional or national economy resulting from the Petitioner's employment would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

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[2] The Petitioner did not complete the requested information in "Part 6. Basic Information About the Proposed Endeavor" of the Form I-140. He discussed his endeavor using various job titles, such as construction estimator and construction supervisor, architectural and engineering manager, and contractor consultant. He has not explained what the job title variations represent or whether they signify differences in the proposed endeavor work. In his request for evidence (RFE) response, he stated his proposed endeavor is to work as an architectural and engineering manager. He explained the occupation as a blend of the duties of civil, structural, and architectural engineers as well as quantity surveyors.

[3] The second prong of the Dhanasar framework "shifts the focus from the proposed endeavor to the foreign national." Id.

While we agree that construction, engineering, and infrastructure are important fields and industries and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the proposed endeavor. When determining national importance, the relevant question is not the importance of the 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. at 889. Much of the Petitioner's evidence relates to the importance of the industries and professions named above, rather than his specific proposed endeavor. We conclude the articles, reports, and statistics do not support a finding of the proposed endeavor's national importance.

The evidence does not suggest the Petitioner's solutions or skills differ from or improve upon those already available and in use in the United States, nor has he claimed he has access to less expensive building materials or more cost-effective construction methods. Further, the record does not show how he would make housing more affordable and available. Stated simply, the evidence does not support a finding that his proposed endeavor will have any implications within a particular field or for the nation. The Petitioner's endeavor may impact the companies he works for and their clientele, but the record does not establish that his proposed endeavor stands to have a broader impact.

The Petitioner emphasized the importance of his duties and role within various companies. In support, he provided letters and statements that describe his duties, the successes he had on projects, and the results he achieved for his employers. While this evidence demonstrates the magnitude and importance of his work for the companies that employed him, we conclude that it does not demonstrate the national importance of the proposed endeavor. The record does not suggest the Petitioner's work would meet the current demand for skilled construction workers and experienced engineers, address the national shortage in these and related fields, or extend beyond his employers and clients. Accordingly, we conclude that the Petitioner has not sufficiently demonstrated how his proposed endeavor would impact his field or the nation.

On appeal, the Petitioner relies upon the merits of the services he will provide, his personal and professional qualities, and the importance of the fields and industries in which he will work. However, neither the evidence nor arguments sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude the Petitioner has not met the requisite first prong of the Dhanasar framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar would serve no meaningful purpose.

III. CONCLUSION

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating 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).

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.