U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19913157

Date: FEB. 3, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a petroleum drilling engineer, 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 that while the Petitioner established his eligibility as a member of the professions holding an advanced degree, the record did not establish that he qualified for and otherwise merited a national interest waiver. 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:

[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 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 Petitioner is a petroleum drilling engineer who proposes to continue to work in the United States in this field. He holds the equivalent of a U.S. bachelor's degree in petroleum engineering and has worked for his current employer and its affiliates for more than 15 years. The Director determined that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree, and we agree. The issue on appeal is whether he is eligible, and otherwise merits, a waiver of that classification's job offer requirement. We conclude that he is not.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that 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.

In his decision, the Director concluded that the Petitioner's proposed endeavor was of substantial merit, but did not explain this conclusion. In addition to materials regarding the general importance of the oil and gas industry to the United States, the record also includes evidence specifically regarding the Petitioner's area of expertise, the casing and cementing process in off-shore well drilling, and its importance to the safe operation of these oil rigs. Dr. [redacted] states in his reference letter that "an improper casing and cementing operation in a well can jeopardize the economical production of natural resources, and possibly impose a huge environmental impact, as recently happened in the Gulf of Mexico with the blowout of the Macondo well." This evidence establishes the substantial merit of the Petitioner's proposed endeavor.

With regard to the national importance of the proposed endeavor, the Director noted that the reference letters submitted on the Petitioner's behalf praised his contributions to multiple drilling projects conducted by his employer, but that this evidence was more relevant to whether he is well positioned to advance his proposed endeavor under the second prong of the *Dhanasar* framework. Further, while acknowledging the importance of the Petitioner's work in casing and cementing operations for off-shore drilling, he noted that the benefits of this work would be limited to his employer and would not impact the field more broadly.

On appeal, the Petitioner asserts that the Director erred when determining that his proposed endeavor was not of national importance because the Petitioner failed to establish that his continued employment with his current employer "stands to sufficiently extend beyond [the employer] or any future employers to impact the oil and gas industry or field more broadly." He argues that because this language does not appear verbatim in the *Dhanasar* decision, it is "baseless terminology." But we disagree that the language the Director used was not in keeping with the analytic framework laid out in *Dhanasar*. That framework considers the "broader implications" of an individual's proposed

endeavor, which could mean "national or even global implications within a field" or an endeavor of smaller geographic scope which nevertheless has "significant potential to employ U.S. workers or has other substantial positive economic effects." It is therefore relevant when conducting an analysis under *Dhanasar*'s first prong to consider whether the implications of an employee's work will extend beyond their employer to the field overall.

The Petitioner also argues that the Director should have applied "a similar analysis of the petitioner's first proposed endeavor in *Dhanasar*" to his own proposed endeavor. However, the separate discussion of the two aspects of the endeavor proposed by Dr. Dhanasar in our precedent decision did not create two separate analyses to determine national importance as the Petitioner suggests. Rather, the *Dhanasar* decision applies the analysis it introduced to those separate aspects and explains why one is of national interest and the other is not. We also disagree with the Petitioner's contention that the Director erred in drawing a comparison between his proposed endeavor of continued employment with his current employer to that of a classroom teacher as discussed in our precedent decision, since both circumstances may limit the reach of the implications of their respective endeavors.

The remaining arguments presented by the Petitioner focus on the level of his expertise and his past accomplishments, and the economic, environmental, and national security implications of his work in the oil and gas industry. As for the first point, the Director stressed in his decision that considerations of his education, experience and record of success are specifically reserved for the second prong of the *Dhanasar* analysis, whereas the focus in the first prong is the potential prospective benefit of the specific endeavor. We agree. While a certain level of expertise may allow an individual to engage in an endeavor with potentially wider implications, that expertise itself is not a factor in the national importance of the endeavor.

In regards to the second argument, *Dhanasar* states that it is the specific endeavor that is the focus of the first prong, not the individual's field or occupation. *Id.* at 884. The record includes substantial evidence regarding the importance of the oil and gas industry, but does not establish that the Petitioner's proposed endeavor to continue working for his current employer as a drilling engineer specializing in casing and cementing would have those same implications. We conclude that because the Petitioner has not established the national importance of his proposed endeavor, he does not meet the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

We agree with the Director that the Petitioner has established that he is well positioned to advance his proposed endeavor.

III. CONCLUSION

The Petitioner has not established his eligibility under the first prong of the *Dhanasar* framework, and he is thus not eligible for and does not merit a national interest waiver. While he asserts on appeal that he meets the third *Dhanasar* prong, we will reserve that issue.[2] The appeal will be dismissed for the reasons state above.

ORDER: The appeal is dismissed.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).