U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26958362

Date: MAY 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager and entrepreneur, seeks second preference 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 EB-2 classification. 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, determining the Petitioner did not establish eligibility for a national interest waiver under the three-prong analytical framework. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889-90 (AAO 2016). 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.

The Petitioner intends to provide marketing and event services through a company, [redacted], located in [redacted], Florida. On appeal, the Petitioner contends the importance of small businesses and the management consulting industry, economic effects from job creation, and the benefits of foreign direct investment. In addition, the Petitioner emphasizes his "expertise and sound academic background," "knowledge and skills," and "professional history." For consideration on appeal, the Petitioner offers a revised business plan for [redacted].[1]

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has

[1] We will not consider new eligibility claims or evidence in our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide if for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "will adjudicate the appeal based on the record of proceedings" before the Director); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Here, the Petitioner could have submitted a revised business plan in response to the director's request for evidence (RFE); instead, the Petitioner resubmitted the initial business plan in the RFE response.

squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director thoroughly reviewed, discussed, and analyzed the Petitioner's national importance claims under the first prong of *Dhanasar*, including the business plan, reference letters, revenue and payroll forecasts, distressed employment areas, and job creation.

As it relates to the Petitioner's experience and ability claims, those relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Moreover, the Petitioner must establish the national importance of operating [redacted] rather than the importance of small businesses and the management consulting industry, economic effects from job creation, and the benefits of foreign direct investment. The relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Further, "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.*

Upon review of the record, we agree with the Director that the Petitioner has not established that his proposed endeavor sufficiently extends beyond the company and its clientele to impact the industry or the field more broadly, at a level commensurate with national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. As discussed by the Director, the Petitioner has not demonstrated the business plan's claimed potential of employing 134 individuals across the United States, including some in distressed areas, or the projected $10 million revenue over five years has substantial positive economic effects for our nation. *Id.* at 890. The petition will remain denied.[2]

ORDER: The appeal is dismissed.

[2] 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* precedent decision, further analysis of the Petitioner's eligibility under the second and third prongs would therefore serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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 alternate issues on appeal where an applicant is otherwise ineligible).