U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28089189

Date: OCT. 05, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an engineer with sales and management experience, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 the record did not establish that the Petitioner was eligible for, and merited as a matter of discretion, a waiver of the job offer requirement. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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;
- 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 an engineer with several years of experience as a sales engineer and in management positions. He proposes to serve as the general manager and head engineering consultant for [redacted], a company he founded to provide consulting in the areas of electrical engineering and technical sales, and to facilitate business between companies in the United States and those in Ecuador and other South American countries.

In his appeal, the Petitioner argues that by issuing a notice of intent to deny (NOID) instead of a request for evidence (RFE), the Director did not follow United States Citizenship and Immigration Services (USCIS) policy and prejudiced him by providing a shorter timeframe to respond with additional evidence and arguments than would have been provided in an RFE. Although 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE or a NOID, neither the Act nor the regulations compels us to do so. In addition, since the Petitioner requested a national interest waiver, which is a discretionary benefit, the Director's decision to issue a NOID was in keeping with agency policy. *See generally* 1 *USCIS Policy Manual* E.6(F)(4), www.uscis.gov/policy-manual.[2]

A. Eligibility for the EB-2 Classification

As noted by the Petitioner, the Director's decision did not include a determination regarding his eligibility for the EB-2 immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability. The record includes evidence of the Petitioner's Title of Electrical Engineer degree from [redacted] University in Ecuador in 2007, as well as a master's degree in industrial automation and control from the same institution in 2015. An educational credential evaluation report concludes that this education is the equivalent of a bachelor's degree in electrical engineering and a master's degree in industrial automation and control from an accredited college or university in the United States. This evidence establishes the Petitioner's eligibility as a member of the professions holding an advanced degree, and thus his qualification for the EB-2 classification. Therefore, the sole remaining issue is whether, as a matter of discretion, the Petitioner merits a national interest waiver of the classification's job offer requirement.

[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).

[2] We further note that due to flexibility measures put in place in response to the COVID-19 pandemic, which were applicable at the time the NOID was issued, USCIS granted the Petitioner an additional 60 days to provide his response. That he submitted his response with approximately 30 days remaining in that period belies his claim to have been prejudiced by not having additional time to respond.

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, 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 their decision, the Director concluded that the Petitioner's proposed endeavor is of substantial merit. Based on the evidence of the merits of engineering consulting in the area of business, we agree. But the Director went on to conclude that the record was insufficient to show the proposed endeavor's national importance. They noted that the potential prospective impact of the Petitioner's specific endeavor had not been shown to broadly affect the engineering consulting industry, or to have national or even global implications. In addition, the Director concluded that the benefits to the local or regional economy from the proposed endeavor had not been demonstrated to potentially have substantial positive economic effects.

On appeal, the Petitioner refers to his previously submitted evidence and arguments, asserting that the Director did not adequately consider his NOID response. With that response, he included an expert opinion letter from [redacted], a professor at [redacted] University, who opined on his eligibility for a national interest waiver. But [redacted] letter largely repeats information found in the Petitioner's resume and business plan, and refers to data about the field of engineering and the engineering services industry in general. For example, when purporting to discuss the substantial positive economic effects of the Petitioner's proposed endeavor, which is a potentially positive factor mentioned in *Dhanasar*, the letter provides statistics regarding the size of the global engineering services market, the number of jobs in the engineering and architectural services sector in the United States, and the growth of the global management consulting industry. It does not explain any substantial positive economic effects of the Petitioner's specific proposed endeavor, which as noted above is the focus of the first prong of the analytical framework, and therefore does not support its national interest.

The Petitioner also referred in the NOID response to his personal statement and the business plan for [redacted] when discussing his proposed endeavor's potential positive economic effects and job creation, pointing out the plans to employ 15 individuals by the end of its fifth year of operation, including sales representatives and electrical engineers. We note that the business plan provides no basis for these hiring projections, providing statistics concerning broad regional and industry trends as opposed to specific information relating to this company and its potential clientele and workload. This is also the case for the business plan's sales and profit forecasts, which are projected to be approximately $800,000 and $100,000, respectively, at the end of the fifth year of operation. As these figures are not supported by relevant data and analysis specific to the Petitioner's proposed endeavor, they do not sufficiently demonstrate the claimed substantial positive economic effect.

In addition to not sufficiently supporting these projections of the specific endeavor's economic impact, the Petitioner also has not established that those figures show that that impact would be of national importance. Notably, when referring to the potential to employ U.S. workers, the *Dhanasar* decision indicates that a "significant" potential, especially in an economically depressed area, "may well be

understood to have national importance." *Dhanasar* at 890. But the Petitioner has not demonstrated that the employment of 15 individuals, or the indirect employment of additional contractors and service providers, would be significant in the context of the [redacted] Florida area where the business is to be located, or an a broader basis.

The NOID response also refers to USCIS policy guidance stating that "Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings... have sufficiently broad potential implications to demonstrate national importance." *See generally* 6 *USCIS Policy Manual* F.5(D)(2), www.uscis.gov/policy-manual. However, the Petitioner does not propose to conduct research or advance technologies in the field of electrical engineering, but to serve as a consultant and sales engineer to help businesses to upgrade or replace electrical machinery. And while he possesses an advanced degree in a STEM field, much like the petitioner in *Dhanasar*, STEM activities which do not impact a field more broadly are not of national importance. *Dhanasar*, 26 I&N Dec. at 893.

For the reasons discussed above, we conclude that the Petitioner has not established that his proposed endeavor is of national importance, and he therefore does not meet the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

The Petitioner has established his eligibility for the EB-2 immigrant classification as a member of the professions holding an advanced degree. However, he has not demonstrated that his proposed endeavor is of national importance, and thus does not meet the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining prongs of the *Dhanasar* analytical framework. *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).

ORDER: The appeal is dismissed.