U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23133637

Date: DEC. 13, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a chief executive officer, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined that the Petitioner qualifies for the underlying classification and that his proposed endeavor has substantial merit. Nevertheless, the Director denied the petition, concluding that the evidence did not establish the national importance of the proposed endeavor or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts his eligibility, arguing that the Director did not review the evidence properly and erred in the decision. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. Nevertheless, the Director found the evidence insufficient to establish the national importance of the proposed endeavor. We agree.

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). Therefore, while we may not discuss each piece of evidence individually, we have reviewed and considered each one.

In the initial filing, the Petitioner stated verbatim:

> The focus of my proposed endeavor is to continue growing my company, [redacted] of which I am the Chief Executive Officer and Co-Founder. . . . [redacted] is a global technology company specializing in [redacted] . . . The main product is a cutting-edge [redacted] I intend to create several "Showrooms" throughout the U.S. to showcase the [redacted] technology and act as regional distribution hubs from where our product can be rented out for nearby events.

In Dhanasar, we noted that "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." See Dhanasar, 26 I&N Dec. at 889. Because the Petitioner's main focus is to grow his company and rent out his products, we cannot conclude that the proposed endeavor, as described, has national importance. Likewise, the record reflects that [redacted] technology is the subject of patents, which suggests that the technology is not available publicly or to the nation at large, but rather to those who engage [redacted] in a business

transaction. Accordingly, we conclude that the primary benefits of the proposed endeavor accrue to the Petitioner's own business and employment, as well as to those who rent [redacted] products or purchase its services.

To support a finding of national importance, the Petitioner highlighted the applicability of [redacted] technology to various sectors and industries, including branding events, the military, entertainment, and education. 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." See id. Similarly, the wide applicability of the technology does not sufficiently establish the national importance of the proposed endeavor. To establish national importance, the Petitioner must demonstrate the proposed endeavor's impact, rather than relying upon its applicability. Regarding the endeavor's impact, the Petitioner claimed it will produce positive results for other businesses, contribute to the economy by generating jobs and increasing tax revenue, promote [redacted] learning, and offer the military a [redacted] solution [redacted] needs.

The Petitioner's business plan indicates that the proposed endeavor will create 17 direct jobs by year 5; however, the Petitioner has not sufficiently explained how his business would create these jobs, nor has he explained how creating 17 jobs would rise to the level of national importance. The Petitioner plans to transfer the [redacted] production process from Brazil to the United States and asserts that the transfer will generate additional jobs. The Petitioner has not explained how transferring the production process to the United States would create jobs, nor has he explained how many jobs it would create. Here, the Petitioner asks that we accept, without evidence, that the transference would confer benefits upon the United States. The Petitioner also asserts that transferring the production process to the United States will increase revenue for [redacted] and the company accepting the transference, as well as provide cost savings to [redacted] Benefits to the transacting companies, even if substantiated, would not demonstrate how the proposed endeavor's impact rises to the level of national importance.

In his business plan, the Petitioner offered revenue projections for the proposed endeavor over a five-year period; however, he offered little foundation for the calculation of these figures. The Petitioner has not sufficiently explained how he will achieve such revenue levels, which would necessarily depend on the number of businesses that transact with [redacted] As the record currently stands, these projections appear to be little more than aspirations and conjecture. Therefore, we conclude that the business plan does not support a finding that the proposed endeavor's impact would rise to the level of national importance.

The Petitioner provided the revenue projections to an economic analysis consulting organization, which extrapolated them to determine their overall economic impact. The individual creating the report stated that he presumed the Petitioner's projections to be accurate and as such, his report offered no independent analysis of how the Petitioner calculated them. The report stated that the proposed endeavor would generate a five-year total economic impact of 191 new jobs and over $46 million. The report further estimated that the proposed endeavor "has the potential of generating substantial economic impact in the United States, including increase in economic activity, creation of hundreds of jobs, increase in wages and salaries, and increase in tax revenue for the federal, state, and local governments." However, as the report relied upon figures the Petitioner provided, without inquiring

into the basis or accuracy of them, the conclusions provided in the report offer little support for the actual impact of the proposed endeavor. Without sufficient information or evidence regarding projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's business would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Because we question the validity of the report's assumptions, we conclude that it does not show how the proposed endeavor's impact would rise to the level of national importance.

The Petitioner's assertion concerning the proposed endeavor's military application is likewise unpersuasive in establishing its national importance. While we agree that [redacted] offer [redacted] options for the armed forces, the record does not indicate that the Petitioner would exclusively supply this technology to the U.S. military such that it would offer the United States a nationally important advantage. Nor does the record contain sufficient details about the [redacted] already used in the military in comparison with the Petitioner's [redacted] such that we could determine how the Petitioner's technology is better or different. Furthermore, the record does not support a finding that the proposed endeavor operates on a scale sufficient to substantively impact the military's [redacted] capabilities.

The Petitioner emphasized that his proposed endeavor offers [redacted] learning in Science, Technology, Engineering, Arts, and Math (STEAM) fields. Documents suggest that the Petitioner offered a [redacted] to one high school and as a result, the students demonstrated more interest and enthusiasm in STEAM topics. However, these results have not been substantiated, nor has the Petitioner explained how the impact of such activities would rise to the level of 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. Although the Petitioner proposes to partner with another business to teach STEAM in schools using [redacted] he provided insufficient detail concerning his plans in this area. For instance, the Petitioner has not explained which schools he will target, how many students he will teach, and the results he will achieve. Therefore, the Petitioner has not established that his [redacted] learning would impact his field or the field of education more broadly to reach a level commensurate with national importance.

The Petitioner provided numerous reference letters from colleagues and professional acquaintances. The authors of the letters extol the Petitioner's personal and professional qualifications, his past record of achievements, as well as his performance and experience. However, the Petitioner's qualifications and expertise relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong.

The authors discuss applications of the technology to various industries and the importance of those industries, but they do not meaningfully discuss the proposed endeavor and its impact. Although some of the authors noted the proposed endeavor's tax revenue and job creation potential, they offered little support to substantiate their conclusions. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. See 1756, Inc. v. U.S. *Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). We conclude that the authors primarily discuss topics not relevant to the

national importance of the proposed endeavor and when they discuss the proposed endeavor's impact, they provide unsubstantiated claims of economic benefit.

On appeal, the Petitioner asserts the Director did not review the evidence under the preponderance standard. In support, he relies upon arguments and evidence already submitted and found to be insufficient. The Petitioner emphasizes that he submitted "vast documentation" to support his eligibility. While we agree that the Petitioner offered a significant volume of evidence, eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. Matter of Chawathe, 25 I&N Dec. 369, 376 (citing Matter of E-M-, 20 I&N Dec. 77, 80 (Comm'r 1989)). For instance, although the Petitioner submitted reams of promotional materials and event photos, he has not sufficiently established how such evidence demonstrates the proposed endeavor's national importance.

The Petitioner references the updated policy guidance on national interest waiver petitions. We are aware of the guidance and have applied it in review of this petition. The policy guidance also reminds adjudicators that claims lacking corroborating evidence are not sufficient to meet a petitioner's burden. See generally, 6 USCIS Policy Manual F.5D4, https://www.uscis.gov/policymanual. The Petitioner bears the responsibility of ensuring that the record demonstrates how he qualifies for a national interest waiver. Section 291 of the Act, 8 U.S.C. § 1361. He has not done so here.

III. CONCLUSION

The documentation 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. 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) ("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 reason.

ORDER: The appeal is dismissed.