U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27926807

Date: AUG. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is an IT consultant who 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 determined that despite qualifying for the underlying EB-2 visa classification as an individual holding an advanced degree,[1] the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that his endeavor has national importance,[2] (2) did not demonstrate that he is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States. 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 because the Petitioner did not establish that his specific proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of *Dhanasar* framework. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate

[1] The Petitioner provided a copy of his diploma showing that he earned a "Bacharel em Sistemas de Informação" degree from Universidade [redacted] in Brazil in 2007. However, the record does not include a corresponding transcript showing that the Petitioner earned a 4- or 5- year degree, which "represents attainment of a level of education comparable to a bachelor's degree in the United States," as opposed to a 3- year degree, which the American Association of Collegiate Registrars and Admissions Officers Electronic Database for Global Education does not deem as the equivalent of a U.S. bachelor's degree. The Petitioner would need to address this deficiency in any future proceedings where attainment of a U.S. bachelor's degree or its foreign equivalent is required to establish eligibility. *See* 8 C.F.R. § 204.5(k)(2) (requiring a U.S. bachelor's degree or foreign equivalent followed by five years of progressive experience in the specialty to determine that a petitioner is an advanced degree professional).

[2] The Director determined that the Petitioner's endeavor was shown to have substantial merit.

arguments regarding the two remaining *Dhanasar* prongs. *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).

In addressing the issue of national importance, the Director acknowledged the Petitioner's submission of a business plan discussing his endeavor to be the chief executive officer of his own IT consulting business. The Director also acknowledged the Petitioner's submission of various industry articles about entrepreneurship and the role of immigration in entrepreneurship. However, the Director pointed out that in addressing the national importance aspect of the first prong of the *Dhanasar* framework we focus on the Petitioner's specific endeavor. In doing so, the Director determined that the Petitioner did not provide evidence that his specific proposed endeavor would result in substantial U.S. economic impact or job creation or that it would broadly enhance societal welfare. In sum, the Director concluded that the Petitioner did not provide sufficient evidence showing that his endeavor would have broad implications that would rise to the level of national importance.

On appeal, the Petitioner argues that the Director "has not conducted a thorough analysis" of the evidence within the context of the *Dhanasar* framework. The Petitioner points to new USCIS guidance pertaining to entrepreneurs seeking a national interest waiver, claiming that there are "unique aspects of evidence" that may be considered, such as a petitioner's ownership interest and "active and central role [in the endeavor] such that [their] knowledge, skills, or experience would significantly advance the proposed endeavor." However, to the extent that a petitioner's ability to advance their endeavor pertains to the second prong of the *Dhanasar* framework, those points do not directly address or appear entirely relevant to a determination of the endeavor's national importance. *See generally* 6 USCIS Policy Manual F.5(D)(4), http://www.uscis.gov/policy-manual.

We further note that the updated guidance merely acknowledges that "many entrepreneurs do not follow traditional career paths" and lists the types of evidence an entrepreneur may submit in attempt to establish eligibility for the national interest waiver. *Id.* However, this guidance does not indicate that a petitioner qualifies for the waiver by virtue of being an entrepreneur; rather, it states that "[c]laims lacking corroborating evidence are not sufficient to meet the petitioner's burden of proof." *Id.* Here, the Petitioner merely repeats the types of evidence listed in the USCIS Policy Manual and argues that he "warrants an analysis from USCIS of him meeting the National Interest Waiver three-prong test as an entrepreneur." The Petitioner does not, however, specifically address the Director's findings or discuss any of the previously submitted evidence to explain how his submissions corroborate the claim that his endeavor has national importance. The Director analyzed the evidence submitted. Without further elaboration on appeal, we cannot find otherwise based on the evidence before us.

Accordingly, we adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's endeavor. *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 squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give

"individualized consideration" to the case). As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.