U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28289619

Date: AUG. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant and business operations specialist, seeks second preference 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). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. While neither 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 and states that USCIS may, as a matter of discretion, grant a petition if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and, (3) on balance, waiving the job offer requirement would benefit the United States.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies for EB-2 classification as an advanced degree professional, he did not establish any of the three required prongs of the *Dhanasar* framework and therefore did not establish eligibility for 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.

As to the first *Dhanasar* prong, the Director concluded that the Petitioner's proposed endeavor to work as a business operations specialist has substantial merit but not national importance. After a thorough review of the evidence in the record—including the Petitioner's professional plan, educational documents and certifications, letters of support, advisory opinion, and the industry reports and articles—the Director found that the evidence primarily relates to either documenting the Petitioner's work experience and background or providing general information about the field of business operations. The Director concluded that this was insufficient to establish the national importance of the Petitioner's proposed endeavor. The Director noted that a proposed endeavor should be more specific than a general occupation, because in establishing national importance the relevant

consideration is not the importance of the overall occupation or industry, but rather the specific endeavor that the individual proposes to undertake. Therefore, the Director stated, a petitioner should offer details not only as to what their occupation normally involves, but what type of work the petitioner proposes to undertake within that occupation, which the Petitioner did not do. The Director also found that the evidence in the record relating to the Petitioner's work experience and background did not help explain the proposed endeavor or support its national importance. Rather, the Director concluded, this evidence primarily relates to the second prong of the *Dhanasar* framework, which shifts the focus from the proposed endeavor to the petitioner and whether they are well-positioned to advance it.

Additionally, the Director found that the Petitioner's plan to establish and operate his own company—a plan which was submitted in response to the Director's request for evidence (RFE)—was not part of the proposed endeavor as described in the initial petition. As such, the Director decided, the plan would not be considered in analyzing the endeavor's importance, because a petitioner must establish eligibility at the time of filing, and USCIS does not consider material changes made to a petition after its filing.[1] Moreover, the Director found that even if the material changes to the endeavor were considered, the Petitioner did not establish that the company's potential prospective impact would rise to the level of national importance. After thorough review, consideration, and analysis, the Director similarly concluded that the Petitioner did not establish that he is well-positioned to advance the proposed endeavor nor that, on balance, waiving the job offer requirement would benefit the United States.[2]

On appeal, the Petitioner claims that the Director did not "give due regard" to the evidence in the record or apply the appropriate preponderance of the evidence standard. The Petitioner makes general, conclusory assertions as to his eligibility, such as stating that his proposed endeavor "is national in scope, as his professional activities relate to a matter of *national importance* and *impact*, particularly because they generate substantial ripple effects upon key business activities on behalf of the United States" (emphasis in original). The Petitioner claims that his experience in the field, his certifications, and his plan to establish his company will benefit the United States on a national level and therefore establish the national importance of his endeavor.

Although the Petitioner makes the general assertion that the Director imposed a higher standard of proof and did not properly consider the evidence in the record, the Petitioner does not discuss the evidence in the record with specificity, does not describe how it was disregarded by the Director, and does not attempt to address or overcome the Director's specific conclusions regarding the insufficiency of the evidence. For example, although the Petitioner claims on appeal that his business plan and proposed company establish the national importance of the endeavor, the Petitioner does not address the Director's finding that this plan represents a material change to his endeavor nor explain why this plan should be considered part of his endeavor as initially described. Additionally, we note that on appeal the Petitioner again primarily discusses his work experience and background as establishing the national importance of his endeavor, without addressing the Director's finding that this evidence

[1] 8 C.F.R. §103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (1971).

[2] Because we agree with the Director's conclusions as to the national importance element of the first *Dhanasar* prong, and because, as we discuss below, this is dispositive of the Petitioner's appeal, we need not summarize the Director's decision as to the second and third prongs here.

relates to the second *Dhanasar* prong and does not help establish the specific endeavor nor demonstrate its national importance.

Following review of the record, we adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's proposed 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).

The Director's decision thoroughly reviewed, discussed, and analyzed the Petitioner's documentation consistent with our precedent decision in *Matter of Dhanasar*. On appeal, rather than specifically identifying any errors in law or fact in the decision, the Petitioner merely makes broad assertions that the Director did not properly analyze the evidence and that he has established eligibility. These general assertions, however, do not overcome the basis for the denial, including the material change to the proposed endeavor, and are insufficient to establish the Petitioner's eligibility for a national interest waiver.

Because the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs. *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 the applicant is otherwise ineligible).

ORDER: The appeal is dismissed.