U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28962874

Date: DEC. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a specialist consultant in the telecommunications field, seeks an employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 the Petitioner's proposed endeavor did not rise to the level of national importance and that on balance, it was not in the interest of the United States to waive the job offer requirement under the framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] 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.

On appeal, the Petitioner asserts that the Director disregarded critical evidence and made erroneous assertions and conclusions of law in their decision. However, the Petitioner does not submit additional evidence or specific examples to support this claim. The Petitioner restates similar reasoning on appeal that the Director already considered and addressed in denying the petition, and relies on evidence and explanations previously provided, which the Director referenced, quoted, and cited in the decision. The Director thoroughly addressed the *Dhanasar* framework, and explained why the Petitioner meets some of the eligibility criteria, but not all, and therefore why they denied the petition.

We adopt and affirm the Director's decision regarding the Petitioner's eligibility under the first *Dhanasar* prong. *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

[1] The Director's decision also concluded that the Petitioner met the EB-2 classification as an advanced degree professional, his proposed endeavor had substantial merit, and that he was well positioned to advance the endeavor. However, since he did not meet prongs one and three of the *Dhanasar* analysis, the petition was denied.

adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

While we adopt and affirm the Director's decision regarding the Petitioner's eligibility under the first *Dhanasar* prong, we want to clarify one point the Director made. In the decision, under the first prong analysis, the Director states, "[a]lthough the government addresses the telecommunication industry, broadband, investment, STEM, and a shortage of telecommunication professionals, the record does not contain evidence demonstrating that the U.S. Federal Government has an interest in the beneficiary's specific proposed endeavor." While letters from interested government agencies can be helpful evidence, it is not a requirement that the U.S. federal government have an interest in the Petitioner's specific proposed endeavor for it to have national importance[2].

As the Director states, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead USCIS must focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The evidence in the record shows the national importance of the telecommunications industry but not the Petitioner's proposed endeavor. The evidence submitted such as industry articles and reports, show that the federal government and the state of Florida have allocated funds to expand internet access, but the record does not contain sufficient evidence on the Petitioner's specific endeavor and how it will have national or global implications in the field.

In addition, the Petitioner states that his endeavor will focus on rural and underserved areas. He submits evidence of a project sponsored by the state of Florida to expand broadband internet access to designated underserved areas of Florida; but does not establish that his proposed endeavor is part of this project or that he will be serving in these state designated underserved areas. The Petitioner also submits an expert opinion letter in support of his petition, however the analysis on national importance restates the information included in the Petitioner's business plan which was considered in the Director's decision. The letter also reiterates the Petitioner's extensive experience and skill set, which supports him being able to advance the proposed endeavor but does not support the national importance of his proposed endeavor.

The Petitioner's appeal does not sufficiently address or contest the eligibility issues the Director found in applying the *Dhanasar* framework to the evidence presented, and therefore does not overcome the Director's well-reasoned grounds for denying the petition. 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 as a matter of discretion.[3]

ORDER: The appeal is dismissed.

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[2] *See generally* 6 *USCIS Policy Manual* F.5(D)(3), https://www.uscis.gov/policy-manual.

[3] 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) (stating that "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 l&N Dec. 516, 526 n.7 {BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).