U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26964686

Date: JUL. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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. *See 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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. 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 would be in the national interest.

Whilst 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). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has

both substantial merit and national importance, (2) the noncitizen 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

A. Substantial Merit

The Director concluded that the Petitioner did not establish the substantial merit of their proposed endeavor because the Petitioner's proposed endeavor contemplated their continued employment with their employer and the Petitioner's conflicting expressions of the proposed endeavor. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar* at 889. The Petitioner initially described their endeavor as "special project manager" for their employer, a large oilfield services company, performing "reservoir characterization" and "integration management." But the Petitioner alternately expressed their endeavor as "petroleum engineer" or "in the field of petroleum engineering," thereby introducing uncertainty into the record.

Accordingly, the Director issued a request for evidence (RFE).[1] In response to the RFE, the Petitioner broadened their proposed endeavor, claiming they would now function as a "digital transformation,

[1] The Petitioner noted errors by the Director referring to a "shortage of human resources professionals" and a few instances

automations, and operations manager" functioning "within the niche discipline of Oil & Gas." In support, the Petitioner submitted a new Form I-140 with the RFE response containing the new job title "Digital Transformation, Automation and Operations Manager," a non-technical job description referring to copies of letters the Petitioner's employer submitted to USCIS in support of nonimmigrant petitions filed on the Petitioner's behalf, and 143 identified exhibits containing a variety of documentation cited by the Petitioner in support.[2]

A petitioner proposing an endeavor that simply continued their ongoing employment on a permanent indefinite basis, and without a thorough description, would likely face significant obstacles in demonstrating their proposed endeavor's substantial merit and national importance. But that does not preclude adequately described and substantiated proposed endeavors undertaken as part of a petitioner's continuing employment from evaluation of eligibility for a discretionary waiver of the requirement of a job offer, and thus a labor certification, in the national interest under the *Dhanasar* analytical framework.[3]

We share the Director's concern regarding the way the Petitioner described their proposed endeavor. The Petitioner's response to the RFE did appear to broaden the activities the Petitioner proposed to undertake in their endeavor. A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Revisions submitted in response to an RFE constituting a materially different endeavor introduce ambiguity which prevents analysis into a proposed endeavor's substantial merit or national importance. But the Petitioner's revisions here only provided additional details with more information. The record reflects that the Petitioner's expanded activities clarify the "reservoir characterization" and "integration management" activities in the oil and gas industry they described in their initial petition. So the Petitioner's revisions broadening the description of the activities of the proposed endeavor, whilst concerning, retained the character and nature of the proposed endeavor initially described by the Petitioner.

The record before us contains evidence of the characterization of the Petitioner's proposed endeavor in the oil and gas industry, which falls within the range of areas we concluded could demonstrate

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of incorrect pronoun usage in the RFE. We have noted and considered the Director's errors and conclude they did not impact the ultimate decision in this matter.

[2] The Petitioner alleges at appeal that the Director's RFE and Decision violated the Administrative Procedures Act ("APA") because they were "boilerplate and contradictory" and "contained no discussion whatsoever regarding the voluminous evidence" submitted by the Petitioner. In the first instance, the Petitioner did not identify any specific section of the APA the Director allegedly violated. Moreover, the Petitioner questioned the contents of the RFE and Denial in broad and general terms without identifying any specific examples. The RFE and the Denial both provided an individual consideration of the Petitioner's evidence. For example the Director discussed the contents of the Petitioner's petition support letter in the RFE with specific detail summarizing the Petitioner's contention. In the Denial, the Director included a consideration of the letters of recommendation submitted in the record. So we conclude that the Director followed the applicable regulations at 8 C.F.R. §§ 103.2(a)(8) and 103.3.

[3] We note that during the pendency of these proceedings, the Petitioner's employer has changed from the large oilfield services company for whom they were initially working to a new employer which is a joint venture between the large oilfield services company and a large industrial automation and digital transformation company. The Petitioner's endeavor remained unchanged notwithstanding the change of employer.

endeavor of substantial merit. The record supports with citation to independent scholarly articles and media the substantial merits of the Petitioner's proposed endeavor. So we withdraw the Director's determination and conclude that the Petitioner's proposed endeavor has substantial merit.

B. National Importance

The Director concluded that the Petitioner did not demonstrate their proposed endeavor was of national importance because the Petitioner did not demonstrate the broader implications of the proposed endeavor or its potential positive economic effects. For the below reasons, we agree.

In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have a national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id* at 890. What is critical in determining the national importance under *Dhanasar* is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. So it is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined.

As stated above, the Petitioner's proposed endeavor is to continue their career as a "Digital Transformation, Automation and Operations Manager" working with U.S. companies in the field of oil and gas. The Petitioner roots their eligibility under this first prong of the *Dhanasar* framework by citing their previous professional experiences, awards, and recognitions as described in their curriculum vitae. The Petitioner submitted a personal statement together with several recommendation letters from previous associates describing the work that the Petitioner accomplished while in their employ to support the potential prospective impact of their work in the proposed endeavor. They also submitted numerous certificates purporting to support their skills in sub-disciplines of their field of endeavor. And they provided an advisory opinion from [redacted] an associate professor of mechanical engineering at [redacted] University in [redacted] Oregon. [4]

On appeal, the Petitioner states that their proposed endeavor's national importance stems directly from their work and achievements earned over a career spanning two and half decades. The Petitioner contends that national importance is broadly implicated by the potential value of their continued work in their field of endeavor.

Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The infirmity in the Petitioner's description of their endeavor is patent upon examination into the evidence and argument they introduced into the record. The Petitioner's evidence and argument do not help them carry their burden of production and persuasion because it does not relate to the proposed endeavor's national importance under the first prong of the *Dhanasar* framework.

The Petitioner stresses that their *execution* of the proposed endeavor is what will elevate it to a level of national importance due to their continuous work in the field over the past 25 years. The Petitioner stated that their past work experience and achievements render their work in their proposed endeavor likely to achieve results that will benefit the United States national interest. On appeal, the Petitioner essentially attempts to convince us that their many years of progressive experience in the oil and gas industry elevates any endeavor they propose to undertake in the United States raised to the level of national importance. They also highlight their "prominence" and "importance" in their field up to now. But the Petitioner's claims are not persuasive. The Petitioner's argument spotlights a fundamental misunderstanding of the *Dhanasar* framework's first prong. The first prong focuses on the proposed endeavor; not on the Petitioner's execution of that proposed endeavor. The *Dhanasar* framework is consequently unconcerned with the likelihood of the success of the proposed endeavor or the Petitioner's longevity in their field of endeavor previously. The Petitioner's contentions about their successful past performance in the endeavor they propose, as well as evidence and information of their achievements and recognition, would better serve a demonstration of eligibility under the *Dhanasar* framework's second prong. So the Petitioner's contentions about their successful career-to-date, as well as evidence and information of their achievements and recognition such that they are, are irrelevant to an examination of their eligibility under the first prong of the *Dhanasar* analytical framework.

The Petitioner's employment verification and employment letters did not reflect how the proposed endeavor implicates national importance because the letters focused on the Petitioner's past work. When evaluating the national importance of a proposed endeavor under the first prong of *Dhanasar*, we are concerned with its potential prospective or future impact. The Petitioner's demonstration of prior similar work does not have an influence on the proposed endeavor's potential prospective impact based on its national importance.

Moreover, the certificates in various discrete subjects such as GO HSE, auditing, management, and disruptive strategy the Petitioner introduced into the record do not illuminate the endeavor's national importance. The certificates earned by the Petitioner relate to them as an individual and their own personal development of their core skills. The proposed endeavor's national importance stands separate and apart from the Petitioner's skills.[5]

[5] As stated previously, the Petitioner's education, skills, and knowledge are a relevant point for evaluation under *Dhanasar's* second prong.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* The advisory opinion submitted by the Petitioner does not illustrate how the Petitioner's proposed endeavor rises to national importance either. The writer mainly focused their analysis on the Petitioner's past performance of development and expansion duties with their previous employer. But when the advisory opinion does evaluate the endeavor's national interest, it speaks of it in vague or generalized conclusions. For example, the writer contends that the Petitioner's endeavor has "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." But the writer does not identify the specific economically disadvantaged area. And whilst the writer identified the specific responsibilities and actions the Petitioner would undertake in their proposed endeavor with a summary of the prominence and influence of the oil and gas industry, there was no citation to any authority supporting its claim that the Petitioner's performance of the proposed endeavor for their employers influenced the greater oil and gas industry in a manner implicating the national interest. Moreover, the writer emphasized the proposed endeavor's impact to societal welfare or cultural or artistic enrichment by connecting the Petitioner's performance of the endeavor to "keep[ing] gas prices low" and "reduc[ing] the effects of current employment trends in the oil and gas industries, which can have significant social benefits for the workers, as unemployment has been linked with increased stress, communal tensions, homelessness, depression and anxiety." Again, the writer did not describe how their work for a single corporate entity in the field of oil and gas could keep gas prices low or decrease unemployment in a manner that invoked the national interest. The writer mentioned Bureau of Land Management, Energy Information Administration, Inflation Reduction Act initiatives to demonstrate that the Petitioner's endeavor impacted a matter that a government entity had described as having national importance or was the subject of national initiatives. But the writer's description and citation of the governmental initiatives were aspirational, broad, and general. The record did not reflect how the Petitioner's proposed endeavor to continue their career as a "Digital Transformation, Automation and Operations Manager" working with U.S. companies in the field of oil and gas would ensure that Bureau of Land Management onshore oil and gas activities were executed. The record did not explain how the Petitioner's proposed endeavor influenced Department of the Interior responsibilities related to the Inflation Reduction Act. A vast field such as oil and gas has many components and facets which could implicate the national interest. An endeavor residing within a broad field with components or facets of national interest is not nationally important as a default. The writer did not explain the Petitioner's proposed endeavor's potential prospective impact by identifying its broader implications or any positive economic effects that it could be credited with. So we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

III. CONCLUSION

Because the identified reasons are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the 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 alternate issues on appeal where an applicant is otherwise ineligible).

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. So we conclude that they have not established that they are eligible for or otherwise merit a national interest waiver of the job offer requirement, and thus of a labor certification. Accordingly the appeal will be dismissed.

ORDER: The appeal is dismissed.