U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23069342

Date: MAY 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *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.

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).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification,[2] USCIS may, as matter of discretion[3], grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that 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 Director of the Texas Service Center denied the petition. Although the decision did not explicitly address the Petitioner's qualifications for the EB-2 classification as a member of the professions holding an advanced degree, a request for evidence did address these qualifications; the record demonstrates that the Petitioner holds the U.S. equivalent of an advanced degree from Venezuela. While the Petitioner may be eligible for the EB-2 classification, the Director concluded that the Petitioner did not establish that he met any of the three prongs in accordance with the adjudication framework in by *Matter of Dhanasar*. The matter is now before us on appeal. 8 C.F.R. § 103.3.

---

[1] 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) (*NYSDOT*).

[2] 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.

[3] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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 submits the decision for *Matter of Dhanasar*, the decision for *Matter of New York State Department of Transportation,* and a printout from ResearchGate.net showing a percentile score for Mookesh Dhanasar. The Petitioner also submits a brief in which he asserts that the Director "incorrectly and improperly applied the legal criteria for reviewing an NIW approval," claiming that the Petitioner is as qualified as the petitioner in the *Dhanasar* case. The Petitioner also submits news articles discussing illegal immigration, claiming that the Petitioner is not being treated fairly because he has chosen to pursue a legal immigration pathway. We note that this argument is not related to whether the Petitioner has established his eligibility for a national interest waiver.

The Petitioner also states the following (quoted as written):

> Furthermore, the TSC HAS APPLIED A LEGALLY INCORRECT STANDARD concerning the National Interest Waiver's "No Job Offer" requirement, and therefore has gutted the main purpose of the NIW case. For example, the TSC goes into detail arguing about the technical details of [redacted] proposed endeavor. Legally, an applicant's specific job duties and specific job title are germane at the end of the Form I-485 Adjustment process. But for the NIW case, [redacted] needs only to show evidence of his high-degree of expertise and impact. All evidence submitted with his case effectively demonstrated this!! Discussions about whether [redacted] will continue working in his field of expertise (after he gets his Green Card) is a legal question that is adjudicated within the Form I-485 Adjustment process. The NIW is only about expertise!

We adopt and affirm the Director's decision. *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 concerning the Petitioner's proposed endeavor to continue his work as an electrical engineer for his own consultancy and maintenance company does not hinge solely on the Petitioner's job title or specific duties, but provides a detailed analysis of how the evidence of record does not establish the national importance of the proposed endeavor. The Petitioner's purported expertise as an engineer in the oil and gas industry alone is not sufficient to establish his eligibility for a national interest waiver; the record does not establish that the proposed endeavor will have broader implications in the field, have a substantial positive economic impact, has significant potential to employ U.S. workers, or will otherwise serve the national interest. *See Matter of Dhanasar*, 26 I&N Dec. 884. The Director's decision also provides a thorough review of the evidence of record and explains how the evidence does not establish that the Petitioner is well positioned to advance the

proposed endeavor, as well as why USCIS could not conclude that the Petitioner is eligible for, and merits, a national interest waiver as a matter of discretion. The Director weighed the law and facts of the record appropriately, and the petition will remain denied.

ORDER: The appeal is dismissed.