U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30518681

Date: APR. 03, 2024

Appeal of Nebraska Service Center Decision

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

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

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not established 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.

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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). In addition, "profession" is defined as of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(3).

Furthermore, "exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the 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. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[3] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Pettioner presented his bachelor's degree in civil engineering (dated June 19, 2018) and corresponding academic record from [redacted] in Uzbekistan. He also provided his certificate of graduation (March 10, 2021) for a general two-year Japanese language course and corresponding academic record from [redacted] in Japan. In denying the petition, the Director explained that the Petitioner "did not submit a detailed advisory evaluation of his credentials" showing their academic equivalence in the United States. The Director also stated that the Petitioner did not provide evidence showing that "he has at least five years of progressive post-baccalaureate experience in the specialty."[4] We agree with the Director's

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in determining eligibility for exceptional ability classification. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[4] The evidence indicates that the Petitioner did not receive his foreign bachelor's degree until June 19, 2018, and we count

determinations and the Petitioner does not contest them on appeal. Accordingly, the Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner maintains on appeal that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). We agree with the Petitioner that he fulfills the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), but the record does not support a finding that he satisfies any additional criteria.

The Petitioner asserts that he meets the salary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), but he does not point to specific evidence in the record showing that has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. As such, the Petitioner has not established that he meets the requirements of this criterion.

Regarding the membership in professional associations criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), the Petitioner provided documentation of his membership in the American Management Association (AMA) and information about the organization. The evidence presented, however, is not sufficient to demonstrate that AMA has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association.[5] Accordingly, we agree with the Director's determination that the Petitioner has not satisfied this criterion.

With respect to the recognition for achievements and significant contributions criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), the Petitioner contends that his "educational background" and "professional experience" have "enabled [him] to contribute to his field," but he does not identify his specific achievements and contributions to his industry or field. While the Petitioner offered a certificate from his previous employer, [redacted] designating him "Best Employee of the Year . . . for effective and well-performed work," this certificate reflects internal recognition from the Beneficiary's employer and therefore it does not rise to the level of "achievements and significant contributions to the industry or field." For instance, the Petitioner's evidence was unaccompanied by documentation indicating that the Beneficiary's design, manufacturing, and assembly work relating to prefabricated building of metal structures has had an impact beyond his employer and its projects at a level indicative of "achievements and significant contributions to the industry or field." We therefore agree with the Director that Petitioner has not demonstrated he fulfills this criterion.

only his progressive experience in the specialty after that date. The Form I-140, Immigrant Petition for Alien Workers, in this matter was filed on November 17, 2022. With respect to the Petitioner's five years of progressive post-baccalaureate experience in his specialty, he must demonstrate such experience at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). Based on the date he received his foreign bachelor's degree, the Petitioner is unable to demonstrate at least five years of progressive post-baccalaureate experience in his specialty at the time of filing the Form I-140.

[5] The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation."

For the reasons set forth above, the evidence does not demonstrate that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner asserted that he "is seeking employment in the United States of America as [an] entrepreneur in his field of endeavor. By carrying out [the Petitioner's] endeavor of being an independent business owner in his field of endeavor in the United States, [the Petitioner] will help contribute to the country's economy." The Petitioner further contended that his proposed work stands to "create additional jobs for American workers," facilitate "the growth of the American economy," and contribute "to the societal welfare of American citizens."

In the appeal brief, the Petitioner states that he plans to own and operate "his own trucking company, which will be engaged in interstate transportation and will benefit interstate commerce." He claims that his proposed endeavor "is of national importance due to its far-reaching implications in the supply chain and logistics industry, its potential to create jobs and stimulate economic growth, its contributions to societal welfare and cultural enrichment, and its alignment with government initiatives aimed at strengthening the trucking workforce and the nation's infrastructure."

While the Petitioner argues that his undertaking meets the first prong of the *Dhanasar* framework, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his specific proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his business and its customers to impact his field, the logistics industry, the trucking workforce, U.S. societal welfare, government initiatives, U.S. infrastructure, cultural enrichment, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the Petitioner has not shown that the benefits to the regional or national economy resulting from his projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive

of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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).

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Further, 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.