U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37008907

Date: APR. 10, 2025

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 that the record did not establish the Petitioner's eligibility for EB-2 immigrant classification or the requested national interest waiver. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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 submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. 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 the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *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,[2] 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.

Id.

II. ANALYSIS

A. Exceptional Ability

The Petitioner claims to be an alien of exceptional ability based on his satisfaction of all six of the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). The Director determined he did not meet any of the claimed criteria. On appeal, the Petitioner generally disagrees with the Director's conclusions and reasserts his claims to satisfy all six of the regulatory criteria.

Upon de novo review, we agree with the Director's ultimate conclusion that the Petitioner has not established eligibility for the underlying EB-2 immigrant classification, as he has not satisfied at least three of the six regulatory criteria as discussed below.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B)

To satisfy the plain language of this criterion, the evidence must (1) be in the form of letter(s); (2) be from current or former employer(s); and (3) establish at least ten years of full-time experience. Further, such letters "shall include a specific description of the duties performed." 8 C.F.R. § 204.5(g)(1). And, because a petitioner must establish eligibility at the time of filing, they must have acquired ten years of full-time experience prior to the filing of the Form I-140, Immigrant Petition for Alien Worker.[3]

In support of this criterion, the Petitioner initially submitted letters from three of his former employers, including letters from: (1) [redacted] verifying his employment from November 2019 to December 2020 as an IT manager; (2) [redacted], verifying his employment from May 2014 to November 2019 as an IT operations manager; and (3) [redacted] verifying his employment as an IT manager from April 2011 to May 2013. In

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).
[3] *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (requiring a petitioner to establish eligibility for the benefit they are seeking at the time the petition is filed).

addition, he submitted a letter from his certified public accountant (CPA) listing additional experience. In response to the Director's request for evidence (RFE), the Petitioner submitted two new letters from representatives of [redacted] providing additional information related to his employment as well as a letter from [redacted] verifying his employment as a country IT manager, beginning in March 2023.

Upon review, we agree with the Director that the Petitioner does not satisfy this criterion. First, because the Petitioner must establish eligibility at the time of filing, we will not consider his employment with [redacted] or [redacted] that occurred after December 2020. Moreover, while the record contains a letter from [redacted] satisfying the regulatory requirements, the Petitioner has not otherwise provided letters from former employers sufficiently documenting his past experience. The letters from [redacted] do not contain a description of his job duties, and he has not established that the letter from his CPA constitutes a letter from a "former employer" as required by the plain language of the regulation.

We therefore conclude that the Petitioner has not demonstrated that he has at least 10 years of full-time experience in the occupation of IT manager.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C)

Upon review of the complete record, we disagree with the Director's determination that the Petitioner does not satisfy this criterion. The record contains sufficient evidence, including a copy of the Petitioner's relevant certification satisfying the plain language of this criterion.

Accordingly, we withdraw the Director's determination to the contrary and conclude that the Petitioner satisfies this criterion.

> *Evidence that the Petitioner has commanded a salary, or other remuneration for services, which demonstrate exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D)

To satisfy this criterion, a petitioner must show that they have commanded a salary or remuneration for services that is indicative of their claimed exceptional ability relative to others working in the field.[4]

The Petitioner initially submitted a salary report from payscale.com identifying the average IT manager salary in [redacted] Florida as approximately $88,476. In addition, the Petitioner submitted evidence of his salary from [redacted] which included a base salary of $90,000 and a $10,000 bonus, along with a letter from his CPA listing his annual remuneration from [redacted] which reached BRL 278,665.42 in 2019. In response to the Director's RFE, he submitted evidence of his salary with [redacted], as well as a printout from indeed.com indicating that the average base salary of IT managers in the United States is $103,598. The Director concluded that the Petitioner did not submit sufficient evidence comparing his salary with other IT managers in the field.

[4] See 6 USCIS Policy Manual, supra, at F.5(B)(2).

On appeal, the Petitioner continues to rely on the salary data provided from indeed.com, as well as his salary with [redacted] As previously stated, because the Petitioner did not begin his employment with [redacted] until after the filing of this petition, we will not consider that employment or salary to establish eligibility at the time of filing. Moreover, we agree that the Petitioner has not otherwise met this criterion based on the salaries earned from [redacted] The Petitioner initially provided comparative salary data covering [redacted] Florida, but did not explain how this salary relates to his earnings as the record did not indicate he was working in [redacted] Florida. Even so, given that the Petitioner's salary from [redacted] is consistent with the average salary documented in the record, and he has not provided comparative salary data relevant to his earnings in Brazil, he has not established that he earned a salary demonstrative of exceptional ability.

Without more, we agree that he does not satisfy this criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner claims to satisfy this criterion based on his membership with the [redacted] The Director determined that the Petitioner did not establish that [redacted] is a "professional association" as contemplated by the regulations. On appeal, the Petitioner asserts that [redacted] is a "globally recognized professional association dedicated to advancing the practice, science, and profession of project management." The Petitioner also highlights that [redacted] is renowned for its [redacted] certifications, which require certain educational and professional experience to complete.

Yet, while the Petitioner asserted that several of [redacted] members have earned U.S. bachelor's degrees, the record does not establish that the association requires its members to have obtained a U.S. bachelor's degree or equivalent. The regulatory definition of "profession" includes an occupation whose minimum requirement for entry is a U.S. baccalaureate degree or its foreign equivalent. 8 C.F.R. § 204.5(k)(2). Here, because the Petitioner did not provide evidence to establish that the association requires at least a U.S. baccalaureate degree or its foreign equivalent as a minimum requirement for membership, or that it otherwise constitutes as a professional association as contemplated by the regulation, the Petitioner does not satisfy this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

The plain language of this criterion requires the Petitioner to establish that he has received recognition for "achievements *and* significant contributions to the industry or field." The Director acknowledged the evidence in the record, including multiple recommendation letters attesting to the Petitioner's competency and success in his prior positions, but concluded that the record did not demonstrate the Petitioner had made significant contributions to his field.

On appeal, the Petitioner generally disagrees with the Director's conclusions, asserting that the letters contained in the record establish the Petitioner's exemplary qualifications and outstanding hands-on experience. Yet, the Petitioner does not address the Director's conclusions that the evidence does not establish his contributions to the field. Nevertheless, upon de novo review, we agree with the Director

that, while the record contains numerous letters from the Petitioner's former employers, colleagues, and peers praising his skills and abilities, along with evidence of complementary emails, he has not shown significant contributions to his field.

As a preliminary matter, we note that the Petitioner again relies on his employment with [redacted] to satisfy this criterion; however, because this employment did not begin until after the filing of the petition, we will not consider his work with the company in evaluating this criterion.

Turning to our review of the remaining letters in the record, while the letters detail his success in several projects, and his lasting effect on the company's operations, the letters do not establish how his work contributed to the field more broadly. For example, a letter from the vice president of customer support for [redacted] states that the Petitioner's expertise allowed him to manage large-scale, critical projects for the company and its customers. And they praise the Petitioner for developing "a documentation processes that allowed the Help Desk to fix 30% more issues," as well as his development of a project management methodology that impacted all levels of IT operations. Accordingly, due to the Petitioner's exemplary work, the company was able to execute new contracts with its customers. Similarly, another letter from the Petitioner's colleague praises him for his ability to foster positive work environments and his commitment to employee development, and his success in increasing uptime across IT environments by 99.9%.

While these letter details the contributions the Petitioner made to his previous employers and customers, the letters do not explain how his work resulted in significant contributions to his field, beyond the immediate benefit to his former employers and customers. Accordingly, we agree that the Petitioner did not meet this criterion.

Because the Petitioner has not otherwise established satisfaction of at least two criteria, meeting the remaining criterion cannot change the outcome of this appeal. We therefore reserve our determination as to whether the Petitioner satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). And, while we acknowledge the Petitioner has had a successful career, because the Petitioner did not satisfy the initial evidence requirements, we need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

B. 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.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Petitioner intends to work in the United States as an information technology (IT) manager. In his initial filing he stated that he planned to "to continue [his] activities as an IT [m]anager, utilizing all of the knowledge [he has] acquired throughout [his career]," and planned to "improve [his] performance by taking new courses according to the demand in the field." He indicated that he would provide his services to small and large businesses to "create, develop and implement innovative solutions," and would "offer the most suitable methodology for defining the project parameters aimed at supporting many businesses by optimizing processes, reducing costs, increasing productivity, enhancing business intelligence and helping companies operate more efficiently." In addition to providing his services as an IT manager, he also stated that he intends to provide training to others in the field.

In response to the Director's RFE, the Petitioner provided additional details regarding his plans to work in the United States, asserting that he would "implement an integrated and personalized IT management model based on ITIL, COBIT, Scrum, and PMP." He claimed that, by integrating these methodologies into a "singular, robust IT governance model" he would significantly benefit the IT management sector by streamlining operations and reducing costs, while also "improving project success rates and stakeholder satisfaction." According to the Petitioner, this work would optimize operations, boost project success, cultivate innovation, and improve service delivery.

In support of his endeavor, the record contains two professional plans, an expert opinion letter, various industry articles and reports providing general background information on the information technology field and shortages facing the information technology and STEM fields, as well as various letters of recommendation from his current and former colleagues.[5]

Upon review, the Director concluded that the record established the substantial merit of the Petitioner's endeavor, but did not establish its national importance. In particular, the Director determined the Petitioner did not show that his work would result in broader implications beyond his prospective customers, nor did he demonstrate that his endeavor would result in a significant potential to employ U.S. workers or otherwise result in substantial economic benefits contemplated in *Dhanasar*. In particular, the Director acknowledged the Petitioner's assertions regarding the "ripple effect" of his work but explained that the record did not establish a sufficient connection between his work and any broad ripple effects or otherwise explain how the broad impact claimed would be attributable to his specific endeavor.

On appeal, the Petitioner generally disagrees with the Director's conclusion, asserting that his endeavor is nationally important due to the "substantial and multifaceted contributions he is poised to make within the IT field." In doing so, however, he primarily relies on the same arguments he previously put forth before the Director without explaining how the Director erred in their conclusions. We acknowledge that in his appeal the Petitioner also notes that the Director erroneously used an incorrect pronoun for the Petitioner in their decision, which he asserts raises concerns as to the

[5] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

sufficiency of the Director's review of the record. We have noted and considered the instances of incorrect pronoun usage by the Director in their decision but conclude it did not impact the ultimate decision in this matter, and is, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. at, 350 n.5 (citing *Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) (stating that error is harmless where there is no "reason to believe that . . . remand might lead to a different result" (citation omitted))). It is not enough to generally assert errors in a decision. The Petitioner must also establish that they were prejudiced by any claimed errors. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *See e.g., Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)).

Turning to our review of the record, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance. The Petitioner's claims on appeal primarily rely on the importance of the information technology field, and IT project management, as well as the importance of expanding access to information technology, rather than the prospective impact of his specific work. But in *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have 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.

Although the Petitioner's statements in the record reflect his intention to provide valuable services to his future employer(s) and customers, the record does not support his assertions that his work will result in broader implications to the field, beyond the potential benefits to his immediate employer(s) or customers. For example, he asserts that "by introducing cutting-edge technologies, nurturing talent, and fostering a culture of innovation," his work would result in broad implications in the field; however, beyond combining methodologies already available in the industry, he does not identify what, if any, cutting-edge technologies he will introduce. Moreover, he does not explain how any methodologies he implements, even if adopted by his customers, would be disseminated to the field at a level commensurate with national importance or would otherwise lead to broader implications to the field. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

And we acknowledge the articles in the record that reflect the U.S. government's interest in enhancing cybersecurity, but the Petitioner did not sufficiently explain and support with evidence how his proposed endeavor would have a national impact on these broad government initiatives. 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. *Dhanasar* at 893. Here too, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his prospective customers to impact his field more broadly at a level commensurate with national importance.

The testimonial evidence in the record, including the expert opinion letter and the letters of recommendation, also provide little probative value in establishing the national importance of the Petitioner's endeavor. For example, in the expert opinion letter, Dr. B-W- focuses primarily on the Petitioner's background as well as the importance of the IT manager occupation to establish the national importance, concluding that the Petitioner's work would provide benefits to U.S. businesses, but Dr. B-W- does not explain how these benefits, even if realized, would broadly impact the field. And while we recognize that the Petitioner has had a successful career, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacks probative value with respect to the national importance of the Petitioner's specific endeavor.

We also agree that the Petitioner has not demonstrated that his intended work in the United States has a significant potential to employ U.S. workers or otherwise offer substantial positive economic effects contemplated in *Dhanasar*. *See Dhanasar* at 890. On appeal, he continues to rely on the potential economic benefits of the field more generally, stating that "technology-driven industries can create high-paying jobs and attract investment," but he does not establish the economic effects directly attributable to his proposed work. Although any basic economic activity has the potential to positively impact a local economy, without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work (as opposed to the general economic impact of the industry), the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.*

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies for the underlying EB-2 immigrant classification as an alien of exceptional ability under section 203(b)(2)(A) of the Act. Further, because 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. Since these issues are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.