U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30210844

Date: APR. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computer and information systems manager, 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. 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.

The Director of the Texas Service Center denied the petition. The Director concluded that the record did not demonstrate the Petitioner merits a discretionary waiver of the job offer requirement 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

[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.

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:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
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> (B) 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;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
>
> (D) Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;
>
> (E) Evidence of membership in professional associations; or
>
> (F) 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).[2]

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[3] See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Matter of Chawathe, 25 I&N Dec. at 376.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

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

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), https: //www.uscis.gov/policy-manual.

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 USCIS may, as matter of discretion,[4] 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

The Petitioner proposes to work as a computer and information systems manager or executive for U.S. companies. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree, however, he did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

We note that in his petition, the Petitioner asserted that he is eligible for the EB-2 classification as an individual of exceptional ability and did not claim eligibility as a member of the professions holding an advanced degree. Upon de novo review, the Petitioner has not established eligibility for the EB-2 classification as an advanced degree professional.

A. Member of Professions Holding an Advanced Degree

The Director concluded that the Petitioner qualifies for classification as a professional holding an advanced degree based on work experience letters; an academic evaluation; a diploma and academic transcript indicating that in 1993 he earned an associate degree in data processing from [redacted] in Brazil; and a certificate and academic record indicating that in 2007 he completed an Executive MBA in business management with an emphasis in strategic management from [redacted] in Brazil. The Director determined that the Petitioner's foreign academic records are the U.S. equivalent of "a Master's of Business Administration in Business Management Degree with an emphasis on Strategic Management" and the work experience letters establish that the Petitioner has five years of progressive experience in his field. Therefore, the Director found that the Petitioner established eligibility as an advanced degree professional. However, after review of the record, we disagree.

Contrary to the Director's determination, the evidence does not establish the Petitioner's foreign academic records are the U.S. equivalent of a master's degree. The record includes an academic evaluation which reviews both of the Petitioner's foreign academic records for their U.S. academic equivalency. The evaluation found his associate degree in data processing from [redacted] to be the U.S. equivalent of "[three] [y]ears of [u]ndergraduate [s]tudy awarded by regionally accredited universities in the United States." For the

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

Petitioner's Executive MBA in business management with an emphasis in strategic management from [redacted], the evaluation found it to be the U.S. equivalent of "[one] year of graduate study awarded by regionally accredited universities in the United States." Therefore, while the record shows the Petitioner has the foreign equivalent of some U.S. undergraduate and master's degree studies, the Petitioner has not established that he earned the foreign equivalent of either a U.S. academic or professional degree above that of a bachelor's degree, or the foreign equivalent of a U.S. baccalaureate degree followed by five years of progressive experience in his specialty.[5] As a result, we withdraw the Director's determination that the Petitioner is eligible to be classified as a member of the professions possessing an advanced degree.

B. Individual of Exceptional Ability

Because the Director did not consider the Petitioner's claims for eligibility for the underlying EB-2 classification as an individual of exceptional ability in the sciences, arts, or business under section 203(b)(2)(B)(i) of the Act, the claims should be considered on remand. To meet eligibility as an individual of exceptional ability, the Petitioner submitted evidence to meet five of the six initial evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). On remand, the Director should evaluate the Petitioner's documentation to determine whether he meets the requirements of an individual of exceptional ability.

C. Substantial Merit and National Importance

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The Director's decision concluded that although the Petitioner's proposed endeavor has substantial merit, the evidence does not demonstrate the national importance of the Petitioner's proposed endeavor. However, the decision does not sufficiently explain the basis for this determination.

The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education.[6] The Petitioner indicated that his proposed endeavor is to work as a computer and information systems manager or executive in the United States. His professional plan states that "[h]e intends to use his skills and knowledge to work for American companies, enterprises, and businesses, to maximize the adequate use of technology and information systems of these companies, allowing these corporations to focus on their core businesses, while

[5] The language of the regulations indicates that an advanced degree equivalency must include a single bachelor's degree, without substituting experience for education or combining lesser educational credentials. The regulations require five years of progressive experience to follow "[a] United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(2). When introducing the EB-2 regulations, the former Immigration and Naturalization Service (INS) explained that "the proposed rule does not provide a procedure to allow experience alone to substitute for either a baccalaureate degree or an advanced degree." Proposed Rule on Employment-Based Petitions, 56 Fed. Reg. 30703, 30706 (July 15, 1991). In response to stakeholder input, the INS reviewed the Immigration Act of 1990 and found the proposed regulations consistent with Congressional intent. The INS stated, "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree*." INS Final Rule on Employment-Based Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added). Thus, an advanced degree professional must have at least a U.S. bachelor's degree or a single foreign degree equivalent.

[6] See generally 6 USCIS Policy Manual, supra, at F.5(D)(1).

guaranteeing an improvement in sales and the possibility of expansion within the American industry." We agree that the evidence in the record is sufficient to show that the Petitioner's proposed endeavor is of substantial merit.

On appeal, the Petitioner argues that the Director's decision "lacks a proper analysis of the totality of the evidence submitted" and did not explain the specific reasons for the finding his proposed endeavor is not of national importance. Also, the Petitioner argues that although the decision references legal grounds and precedent decisions as a basis for the denial, "it does not develop a solid correlation between these aspects and their applicability to [the Petitioner's] case." The Petitioner points to evidence submitted with the petition and with his response to a request for evidence, arguing that the documentation submitted establishes his proposed endeavor has national importance.

In determining the national importance of the Petitioner's proposed endeavor, the Director's decision references the Petitioner's professional plan and his Counsel's letter. However, the decision does not sufficiently explain the reasons the Petitioner does not demonstrate the national importance of his proposed endeavor. Also, the Petitioner submitted additional documentation to show the national importance of his proposed endeavor, including an additional professional plan; two opinion letters; and articles and U.S. government reports relating to the information technology field. The documents include explanations of the proposed endeavor and assertions of its national importance. However, the Director's decision did not reference or analyze these documents.

An officer must fully explain the reasons for denying a petition in order to allow a petitioner a fair opportunity to contest the decision and to allow an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(l)(i); see also Matter of M-P-, 20 I&N Dec. 786 (BIA 1994). In determining the Petitioner did not establish the national importance of his proposed endeavor, the Director's decision did not meaningfully address the evidence submitted with the petition or in response to a request for evidence.

On remand, the Director should analyze the evidence to determine whether the Petitioner has demonstrated his endeavor has national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. The Director should focus on what the Petitioner will be doing rather than the specific occupation. The Director should keep in mind that it is the national importance of the Petitioner's specific proposed endeavor that must be shown, not the importance of the overall field of computer and information systems management. An endeavor having significant potential on the broader implications for a field or region, generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver.[7] The Director should review the record to determine whether the Petitioner has demonstrated his proposed endeavor has significant potential on the broader impact in the field.

If the Director concludes that the Petitioner's documentation does not meet the national importance requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

[7] See generally 6 USCIS Policy Manual, supra, at F.5(D)(1).

D. Well Positioned to Advance the Proposed Endeavor and Whether on Balance a Waiver is Beneficial

The Director's decision did not address whether the Petitioner has sufficiently demonstrated that he is well positioned to advance the proposed endeavor under *Dhanasar's* second prong, or on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification under *Dhanasar's* third prong. On remand, the Director should analyze the evidence to determine whether the Petitioner has demonstrated that he is well positioned to advance the proposed endeavor. The Director should articulate the basis for finding whether the Petitioner has shown that he is well positioned to advance his endeavor. In addition, if the Director concludes that the Petitioner does not meet *Dhanasar's* third prong, the decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

Accordingly, we are remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for the underlying EB-2 classification as an individual of exceptional ability in the sciences, arts, or business. See section 203(b)(2)(B)(i) of the Act. In addition, the Director should properly apply all three prongs of the Dhanasar analytical framework to determine if the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.