U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32458796

Date: AUG. 1, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a management specialist, seeks classification as an employment-based second preference (EB-2) immigrant as a member of the professions holding an advanced degree, 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, although the Petitioner is well-positioned for his proposed endeavor, the record did not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion finding that the Petitioner's proposed endeavor had neither substantial merit nor national importance, and that, on balance, it would not be beneficial to the United States to waive the requirements of the job offer, and thus of a labor certification. 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 first 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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).

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,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] See 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 is discretionary in nature).

- 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. EB-2 Classification

The Petitioner submitted evidence that he completed a 2010 Master's of Science degree in Administrative Management from the [redacted] in Venezuela.[2] The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree and we agree.

B. National Interest Waiver

1. Substantial Merit

The first 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. The Petitioner stated initially that his endeavor is to serve as a management specialist for [redacted] "to help them or any other U.S. company to more innovative and cost-effective strategies that will best suit their objectives and budgets." In response to a Request for Evidence (RFE), the Petitioner elaborated that [redacted] is a vast Georgia-based company with a presence and subsidiaries in seven other states. In response to a Notice of Intent to Deny (NOID), the Petitioner noted that [redacted] expanded their business to an eighth state.

The Director found that the Petitioner made a material change in their proposed endeavor from the description in the RFE response to the description of the proposed endeavor in the NOID response, seeking to demonstrate "a broader impact in other U.S. companies and businesses." In light of the Director's finding that there was a material change in the proposed endeavor, the Director found that she could not find that the endeavor had substantial merit.

We acknowledge that the Petitioner's initial attorney's letter referenced, in part, a wholly different endeavor in a different industry. However, the Petitioner explained that this section of the attorney's letter was a clerical error. Another part of the attorney's initial letter described the proposed endeavor in a manner similar to the description in the Petitioner's two subsequent filings, responses to the RFE and the NOID. We note that the Petitioner's Form I-140 and Form ETA 750 also both state that the proposed endeavor is to be a management specialist. We accept the Petitioner's explanation that the wholly different proposed endeavor described in part of the attorney's initial letter was the attorney's clerical error.

[2] We reviewed the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE). We consider EDGE to be a reliable source of information about foreign credential equivalencies. See Confluence Intern., Inc. v. Holder, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); Tisco Group, Inc. v. Napolitano, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); Sunshine Rehab Services, Inc. No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also Viraj, LLC v. Holder, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013). See https://www.aacrao.org/edge/country/venezuela for information regarding the education system in Venezuela.

Upon de novo review, we disagree with the Director's findings that (1) the proposed endeavor was materially changed and (2) that the proposed endeavor does not have substantial merit, and we withdraw those two findings. The record shows that the initially proposed endeavor explicitly included helping [redacted] "or any other U.S. company."[1] Therefore, we find that the Petitioner did not materially change their initial proposed endeavor. We also find that the proposed endeavor has substantial merit in the area of business.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. The Director determined that the record did not establish that the proposed endeavor is of national importance as the Petitioner did not establish that their proposed endeavor in the United States will have a broader impact on the field outside of their prospective company.

On appeal, the Petitioner asserts generally that the Director improperly imposed a higher standard of proof than a preponderance of the evidence, erroneously applied the law, and did not consider the totality of the evidence in the record. However, the Petitioner does not support these assertions with specificity as to the record or point to how the Director imposed a higher standard. The Petitioner's unsupported assertions alone are not sufficient to establish error in the Director's decision nor meet her burden of proof to demonstrate eligibility for a national interest waiver. An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. See 8 C.F.R. § 103.3(a)(1)(v). Although the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not specify, as required, how the Director erred or what factors in the decision were erroneous.

In the Director's NOID, the Director acknowledged receipt of "a personal statement, expert opinion letters and various industry and government articles." The record evidence includes the Petitioner's statement (undated), M-M-'s[3] letter of intent and supplemental letter of intent to hire the Petitioner and includes, but is not limited to, the following evidence:

- "How the U.S. Economy Benefits from International Trade and Investment" on-line article from Business Roundtable, (undated);
- Expert opinion letter of Dr. S-S-M-, Professor of Management, Marketing, and Information Systems at [redacted][4]
- Expert opinion letter on [redacted] stationery by Dr. F-J-Q-, an adjunct professor of International Marketing at [redacted], whose resume states that he has been employed by [redacted] since 2017 "on call, non-teaching;"[5]
- Expert opinion letter of Dr. A-A-, an adjunct professor in mathematics and statistics, computer applications, and information systems for [redacted] on stationery from that college;[6]
- Letter of recommendation from E-M- describing past work that the Petitioner performed as a management specialist;

[3] We use initials to protect the privacy of individuals referenced in this decision.

[4] This expert opinion letter speaks to the Petitioner's being well-positioned for his proposed endeavor. The letter only generally speaks to "the realm of economic development and job creation" but does not address how the Petitioner's specific endeavor has national importance. The opinion merely speculates that the Petitioner "has the potential to become not just a national figure" but also a global influence. However, the opinion does not provide a supported explanation of how the Petitioner's efforts will make an impact beyond his own employer on a national or global level, what that impact would be, and in what the national importance of the impact would be.

[5] Dr. F-J-Q- is also an assistant professor at [redacted] and an adjunct at other schools.

[6] Dr. A-A- is also an adjunct professor at [redacted]

- An article about the importance Hispanic food holds for the Hispanic culture;
- Article entitled "*Why is Management Important (26 Reasons)*" downloaded from the internet, enlightio.com; and,
- A White House report, "*The Biden*-Harris Plan to Revitalize American Manufacturing and Secure *Critical Supply Chains in 2022*" downloaded from whitehouse.gov.[7]

In determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. Id. Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. Id. at 890. The Petitioner's evidence does not support how the Petitioner's particular endeavor rises to national importance, but rather addresses the Petitioner's being well-positioned to carry out his endeavor, the importance of management generally in the economy, the cultural importance of Hispanic food, and the impact the Petitioner will have on [redacted] as a management specialist.

We have reviewed the Petitioner's statement and supporting evidence and conclude that it does not establish the endeavor's national importance. As the Petitioner states, he plans to conduct performance evaluations, review employee performance records, assemble a team, analyze data and make strategic decisions "regarding allocation of company resources and activities." He plans to expand his employer in new markets, including Virginia. However, evidence of the Petitioner's education, skills, and expertise, including work experience, generally relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether he is well-positioned to advance it. Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the Petitioner's specific proposed management specialist endeavor has national importance under *Matter of Dhanasar's* first prong. The evidence of the Petitioner's work experience does not support its national importance.

We note that the language of Matter of Dhanasar allows for a regionally focused endeavor to nevertheless establish national importance, and that we should "avoid overemphasis on the geographic breadth" of the proposed endeavor. The analytical framework introduced in Matter of Dhanasar sought to reduce the focus on the geographic impact of an endeavor. See id. at 887. However, the Petitioner does not claim that the Director made any specific legal or factual errors related to the regional focus of the Petitioner's proposed endeavor. The Director did not rely on the endeavor's lack of geographic breadth in concluding that it lacks national importance. Rather, the Director concluded that the Petitioner did not offer sufficient information and evidence to establish that the proposed endeavor would have broader implications for his field or that it would offer substantial positive economic effects. Upon de novo review, we agree. Although an endeavor that is regionally focused may have national importance, it must still have a broad impact. Id. at 889.

As to the national importance of the proposed endeavor specifically, on appeal the Petitioner makes one argument:

> USCIS arbitrarily gives no probative value to the opinion or industry experts on said question. Since USCIS has raised no grounds to contest the authority of expert opinions that [the Petitioner's] proposed endeavor has substantial merit and is of national importance. the opinion should be given deference.

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

We have reviewed the provided expert opinion letters but conclude that the letters provide little probative value in establishing the national importance of the Petitioner's proposed endeavor. For example, in his analysis of the Petitioner's eligibility for a national interest waiver of the job offer requirement, Dr. F-J-Q-states that the Petitioner's "proposed endeavor has significant potential to employ US workers and has other substantial positive economic effects," but he does not state how many U.S. workers the Petitioner's company would employ or specify other economic benefits his company would create.

The expert opinion letters in the record provide conclusory statements discussing the importance of the management specialist field in general, including its impact on the economy, without specifically addressing the broader implications directly attributable to the Petitioner's proposed endeavor. In the national importance sections of their opinion letters, the authors discuss the importance of the management profession and industry, explain how the industry spurs economic growth, and are the subject of national initiatives. When evaluating the national importance of a proposed endeavor, the importance of the industry is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. 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 Car*on 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 letters lack relevance to the national importance of the Petitioner's proposed endeavor and, rather, addresses the Petitioner's being well-positioned to advance his proposed endeavor. The expert opinion letters do not concretely describe how the Petitioner's specific proposed endeavor will have national importance beyond his employer.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. The Petitioner's primary contention on appeal is that the Director applied a higher standard of proof than the preponderance of the evidence standard. In support, he offers no specific examples where the Director did so. We have thoroughly reviewed the evidence in the record and conclude that although the Petitioner asserts that his proposed endeavor has national importance, he offers little corroborative evidence or explanation to support these claims. While the Petitioner provided a significant volume of evidence, eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. Matter of Chawathe, 25 I&N Dec. at 376 (citing Matter of E-M-, 20 I&N Dec. 77, 80 (Comm'r 1989)). Accordingly, we conclude that the Petitioner has not established the national importance of his proposed endeavor.

In summation, the Petitioner has not established that his proposed endeavor has national importance, as required by the first Dhanasar prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the third prong[8] of Dhanasar but, having found that the evidence does not establish the Petitioner's eligibility under the first prong as to national importance, we will not address those arguments here. We reserve our opinion regarding whether the record satisfies the third Dhanasar prong. See INS v. Bagamasbad, 429 U.S. at 25 (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also Matter of L-A-C-, 26 I&N Dec. at 526 n.7 (declining to reach alternative issues on appeal where the applicant is otherwise ineligible).

[8] As mentioned earlier, the Director found that the Petitioner is well-positioned to advance his proposed endeavor.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the Dhanasar analytical framework. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.