U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31478200

Date: AUG. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology service business owner and provider, seeks employment-based second preference (EB-2) immigrant classification 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 the record did not establish 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 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). 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. *Id.*

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

[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).

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 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.

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. 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.

Id.

II. ADVANCED DEGREE

The Director's decision does not include a finding as to whether the Petitioner demonstrated qualification for EB-2 classification as either an advanced degree professional or an individual of exceptional ability. On appeal and before the Director, the Petitioner asserted he qualifies as an advanced degree professional.

In support of this assertion, the Petitioner submitted a 2011 diploma from [redacted] in Brazil for computer technology, a "[T]ítulo de Tecnólogo." The Petitioner also submitted an evaluation before the Director stating the Petitioner is an advanced degree professional based on his academic credentials and professional experience. However, the regulation at 8 C.F.R. § 204.5(k)(2) requires a bachelor's degree or foreign equivalent degree followed by five years progressive experience in the specialty to qualify as an advanced degree professional. A U.S. baccalaureate degree generally requires four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). The Electronic Database for Global Education (EDGE),[4] an online resource that U.S. courts have found to be a reliable source of foreign education equivalencies, indicates that a título de

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

[3] *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).

[4] EDGE is a non-profit, voluntary association of more than 11,000 professionals in more than 40 countries. *See* AACRAO, Who We Are, https://www.aacrao.org/who-we-are. We consider EDGE to be a reliable source of information regarding 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).

tecnólogo in Brazil is "[a]warded following 2 to 3 years of university study, depending on entrance qualifications and the field of study."[5] He therefore has not established that he has a U.S. bachelor's degree or a foreign equivalent followed by five years of progressive experience in the specialty constituting an advanced degree. 8 C.F.R. § 204.5(k)(2). Overall, the Petitioner has not established he qualifies as an advanced degree for EB-2 classification purposes.

As the Petitioner has not demonstrated the national importance of the proposed endeavor or that he is well positioned to advance this endeavor, as outlined below, we reserve any arguments regarding whether the Petitioner qualifies for EB-2 visa classification as an individual of exceptional ability.[6]

III. NATIONAL INTEREST WAIVER

The Petitioner proposes to establish and act as country manager for a company, [redacted] in the United States ([redacted] U.S.), as a counterpart to [redacted] Brazil. [redacted] U.S. plans to provide cloud computing and services related to the information technology (IT) environment, including "implementation, management, monitoring, support, financial management, resource optimization, security, performance improvement and outsourcing of resources and activities." Through [redacted] U.S., the Petitioner intends to provide an IT platform for small and medium U.S. businesses. The Petitioner believes he is well equipped to run [redacted] U.S. due to his IT degree and relevant work experience.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We concur with the Director that the Petitioner has demonstrated his proposed endeavor has substantial merit.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and 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.

However, we do not concur that the Petitioner has met his burden of demonstrating the proposed endeavor is of national importance. The Petitioner asserts he plans to provide services to business subjects within the industry as an entrepreneur. The Petitioner plans to continue his work as an entrepreneur in the field of computer and information systems by providing specialized "IT services

[5] AACRAO, Brazil, https://www.aacrao.org/edge/country/brazil.

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (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. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

such as cloud computing, cybersecurity, system integration . . . redesigning processes, implementing risk management and system development." The Petitioner contends his work will allow him to improve the productivity of companies in the United States. We recognize the importance of IT services in the operation of businesses but in assessing national importance, we focus, not on the specific area or field at issue, but the specific endeavor a petitioner proposes to undertake. *See id* at 889. However, the Petitioner does not provide sufficient evidence to establish his endeavor will have an impact beyond the client companies he would serve or that his proposed work would otherwise have broader implications for the IT industry or its initiatives. Though the Petitioner asserts he intends to redesign processes, for example, he does not detail what processes he would redesign, his role in this process, and how this would have broader implications for our country.

The Petitioner contends that as an entrepreneur, the labor certification process would not be applicable to him. The Petitioner claims that as the United States is already beginning to face a shortage of business professionals, the country has an immediate need for his personal contributions. However, the Petitioner's reliance on the need for entrepreneurs in the IT industry in determining national importance is misplaced. As discussed, when evaluating national importance, the relevant query is not the importance of the industry or profession the individual will work, but on the specific endeavor the petitioner proposes to undertake. *Id.*

The Petitioner asserts he has already demonstrated his ability to generate benefits to the United States, as he has evidenced participation in field-related projects in the United States. The Petitioner asserts he will continue to generate benefits to the U.S. national economy and job market, in addition to its organizations and citizens. Before the Director, the Petitioner submitted a five-year business plan for [redacted] U.S. projecting, amongst other categories, expected revenue, employment of workers, employee salary, and taxation figures. However, the record does not contain supporting documentation or explanation for the basis of these projected figures for [redacted] U.S. The Petitioner also did not meet his burden of demonstrating how these projections, even if properly explained and supported, result in benefits to the regional or national economy to the level of "substantial positive economic effects," as contemplated by *Dhanasar*. *Id.* at 890.

Overall, the Petitioner has not demonstrated through supporting documentation how his endeavor sufficiently extends beyond his prospective clients and employees to impact the field or the U.S. economy more broadly, at a level commensurate with national importance. As such, the Director's finding on the Petitioner's eligibility under the first prong of *Dhanasar* is withdrawn.

B. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong examining whether the petitioner is well positioned to advance the proposed endeavor shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The Director determined, after consideration of the relevant factors, the submitted evidence did not establish the Petitioner is well positioned to advance the proposed endeavor.[7] We concur with that determination. The Director specified that, in support of this prong, the Petitioner submitted a diploma and transcripts; evidence of technical studies; evidence of work experience; testimonial letters submitted on the Petitioner's behalf; a business plan for [redacted] U.S.; a resume; evidence of the Petitioner's participation in the field; agreements; and customer reviews.

On appeal, the Petitioner asserts the Director failed to give due regard to his resume, business plan, evidence of work in the field, letters or recommendation, and industry reports and articles demonstrating the national importance of the endeavor and steep shortage of professionals in the field. As to the last, we have discussed the Petitioner's arguments in support of national importance, including the shortage of professionals, above. And the Petitioner does not claim his submitted industry reports and articles relate to the second prong of the *Dhanasar* analysis. We note the other documents listed by the Petitioner were explicitly considered by the Director in the denial decision.

The Petitioner contends he has demonstrated a level of expertise through his employment roles as director of technology, IT consultant, IT and digital media consultant, and project manager of companies. The Petitioner also contends he has an entrepreneurial history with proven business opportunities and relationships with key customers. As such, the Petitioner previously submitted letters authored by individuals that provide an account of the IT services he has provided. The Petitioner claims these letters evidence his prior success, as they attest to his exceptional abilities in the field. We acknowledge these letters demonstrate the Petitioner's past achievements in providing IT services to the satisfaction of clients. However, as the Director noted, having relevant educational and professional credentials and experience does not render a petitioner well positioned to advance a specific endeavor. The letters do not, moreover, explain or provide specific examples of how his achievements render the Petitioner well positioned to advance his future endeavor in the United States.

In addition, the record does not contain supporting evidence of the Petitioner's claimed financial success in his current company related to the endeavor, [redacted] Brazil. Though the Petitioner has submitted evidence of services provided by [redacted] Brazil, the record lacks supporting documentation regarding the financial stability of this company. Similarly, in his business plan, the Petitioner asserts he and a partner currently own and operate [redacted] Brazil, while [redacted] U.S. was established in 2014 as a counterpart to [redacted] Brazil. The Petitioner claims he and his partner have already invested more than two million dollars in [redacted] U.S. and intend to invest an additional 200 thousand dollars from [redacted] Brazil, but the record does not contain supporting documentation for these claimed investments and revenue. The record also lacks sufficient supporting documentation related to the advancement of [redacted] U.S. since its inception. Overall, we do not find the Petitioner has sufficiently demonstrated progress toward his proposed endeavor or a record of success in a related effort.

The Director determined the Petitioner did not submit documentary evidence demonstrating interest in the endeavor from relevant individuals. The Petitioner asserts on appeal that the service agreement between [redacted] Brazil and [redacted] for providing computer resource services," coupled with positive

[7] It is noted the Petitioner asserts he was deprived of due process and fair treatment under USCIS policy, the U.S. Constitution, and international treaties as the Director did not engage in analysis of the additional *Dhanasar* prongs. However, the Director found the Petitioner had met his burden of demonstrating his eligibility under the remainder of the *Dhanasar* prongs. We withdrew the Director's finding as to the first prong, above.

reviews from customers, demonstrate he is well positioned to advance his endeavor. We acknowledge the record contains previous service agreements between [redacted] Brazil and other companies. However, we concur with the Director that these prior agreements for [redacted] Brazil and "lack of current contract, agreements, or other documentary evidence for the United States business" do not sufficiently demonstrate the interest of potential customers, users, investors, or other relevant entities or individuals in the proposed endeavor in the United States, [redacted] U.S.

Collectively considering the Petitioner's claims under this prong, we conclude he has not established he is well positioned to advance his endeavor. The record does not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals. The evidence also is not sufficient to demonstrate the Petitioner's success in his similar business or his progress toward establishing his new company in the United States. Accordingly, the Petitioner has not established he satisfies the second prong of the *Dhanasar* framework.

C. Additional *Dhanasar* Prong

As the Petitioner has not established eligibility under the first and second prongs of the *Dhanasar* analysis, the Petitioner has not demonstrated eligibility for, or otherwise merits, a national waiver. As our finds are dispositive of this appeal, further analysis of the Petitioner's eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.