U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32717456

Date: AUG. 26, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an industrial engineer, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or an individual of exceptional ability, as well as a discretionary 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 Nebraska Service Center denied the petition, concluding that although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts in holding that USCIS' decision on a national interest waiver is discretionary in nature).

II. EB-2 CLASSIFICATION

As a preliminary matter, to establish that a petitioner holds a qualifying advanced degree, the petition must be accompanied by an official academic record evidencing a U.S. advanced degree or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(3)(i)(A). For EB-2 classification purposes, "advanced degree" means a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate; and a U.S. baccalaureate degree or a foreign equivalent degree *followed by* at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). In lieu of an academic or professional degree above that of a baccalaureate, a petitioner thus may alternatively present an official academic record evidencing a U.S. baccalaureate or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) demonstrating at least five years of progressive post-degree experience in the specialty. 8 C.F.R. § 204.5(k)(2), (k)(3)(i)(B). Evidence of qualifying experience must be in the form of letters from current or former employers and shall include the name, address and title of the writer and a specific description of the duties performed, but if that evidence is unavailable, other documentation will be considered. 8 C.F.R. § 204.5(g)(1).

We agree with the Director's determination that the Petitioner has a foreign degree equivalent to a U.S. bachelor's degree as evidenced by his engineering diploma and school records from a Russian university, which show that his diploma is comparable to a four-year degree in the United States.

However, we disagree with the Director's determination that the Petitioner has at least five years of progressive post-degree experience in the specialty, as required. 8 C.F.R. § 204.5(k)(2). In support of the requisite experience, the Petitioner submitted a letter from G-Z-[2], the head of an aviation plant, stating that the Petitioner worked there as a production engineer from January 2018 to October 2019 (one year and 10 months), and then from January 2022 to September 2022 (nine months). This letter, which is the only evidence he submitted to verify his post-degree experience, indicates that he worked at the aviation plant less than three years and it is unclear whether he worked there on a full-time basis. The Petitioner admits, and his resume, diploma, and the accompanying ETA Form-750 clearly show, that he obtained his bachelor's degree in June 2017 and he subsequently worked for the plant only during the above time periods from January 2018 to September 2022 for less than three years; and he does not claim, and the record does not indicate, he worked there since then and before he filed his petition. While we acknowledge G-Z's and the Petitioner's statements that he also worked at the same plant as an intern for over two years from 2015 to June 2017, this experience does not qualify as it was *prior to* obtaining his diploma. Consequently, the evidence does not establish that he has the requisite post-degree experience, and we therefore withdraw the Director's finding to the contrary.[3]

III. NATIONAL INTEREST WAIVER

Regardless of a petitioner's underlying EB-2 classification eligibility, they still must show that they warrant a discretionary national interest waiver by satisfying *Dhanasar*'s all three prongs, the first of

[2] We use initials to protect individuals' privacy.

[3] The Director did not address whether the Petitioner qualifies for the EB-2 classification based on exceptional ability. And on appeal, the Petitioner does not specifically claim that he is an individual of exceptional ability. Given our determination as further discussed below is dispositive of this appeal, we do not independently reach this issue here.

which focuses on "substantial merit" and "national importance" of the specific endeavor they propose to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In evaluating whether the endeavor has national importance, we consider its potential prospective impact. *Id.*

The Director concluded, in part, that although the Petitioner's proposed endeavor has substantial merit, the evidence did not establish that it is of national importance as required under the first prong of the *Dhanasar* framework. We agree.

The Petitioner intends to work as an industrial engineer and administrative and facilities manager. On appeal, he alleges that the Director did not consider all relevant evidence in assessing the claimed national importance of his proposed endeavor and failed to provide a proper analysis.

As an initial matter, the Director found that the Petitioner's business plan and assertions submitted in response to a request for evidence (RFE) regarding his new position as a chief executive officer (CEO) of his engineering firm constituted a material change to his proposed endeavor as described in his personal statement he provided at the time of filing. We agree with the Director's determination.

If the Petitioner's RFE response proposes an activity in an entirely different field or occupation, that may be considered as a material change to the petition and disregarded on appeal. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) (holding that a petitioner may not make material changes to a petition to make otherwise a deficient petition conform to USCIS requirements); *see also* 8 C.F.R. § 103.2(b)(1) (stating that petitioners must establish eligibility at the time of filing); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm'r 1971) (same). In his personal statement filed with his petition, the Petitioner unequivocally stated that his proposed endeavor is to work as "an independent contractor" as "an industrial engineer" and also work "in administrative and facilities management." But the business plan he submitted in response to the RFE, without further explanation, states that he will open and operate his own company and manage numerous employees, including engineers, and lead the firm as a CEO. The business plan also lists and describes the Petitioner only as a CEO, rather than an engineer or administrative manager as he initially proposed. Moreover, as the Director found, the business plan, without any independent evidence, proposes a number of prospective employees and financial projections for his company, whereas the Petitioner's initially proposed work primarily as an independent industrial engineer lacked any entrepreneurial goals or related projections. Thus, the Petitioner's changing roles, initially from an independent engineer and administrative manager at the time of filing then later to a business leader performing purely executive functions as descried in the business plan in response to the RFE, impedes our ability to assess whether his proposed endeavor has national importance. Other than generally alleging that the Director miscited *Matter of Katigbak*, the Petitioner does not meaningfully dispute the Director's finding that the new role as a CEO materially changes his initially proposed role as an independent contractor, and he does not cite any relevant legal authority for the proposition that such a change is not material.

Even if the proposed endeavor as described in the RFE response merely clarifies the proposed endeavor in the Petitioner's initial statement, the totality of the evidence, including the business plan, does not show that it has national importance. As stated, in determining whether the proposed endeavor has national importance, we consider its potential prospective impact and look for evidence that may be indicate national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889-890. Although

the Petitioner's proposed endeavor as an industrial engineer and now also as CEO of his engineering firm has substantial merit, the record does not establish that it would have significant potential to employ U.S. workers, have substantial positive economic impact, broadly impact the industry beyond his career and potential customers, or otherwise have broader economic or societal implications rising to the level of national importance.

In reasserting that his proposed endeavor has national importance, the Petitioner primarily relies on his academic credentials and professional experience, as indicated in his resume, personal statement, business plan, support letters, as well as the same market information included in the industry articles he submitted below pertaining to the claimed importance of the engineering and manufacturing fields. He further reasserts that, given his background and skills, which he claims ideally position him for the market and its high demands, his work as an engineer and CEO will have substantial positive economic and societal impact. But the referenced evidence focuses on the Petitioner's experience and expertise and specifically pertains to *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. For assessing the national importance of a proposed endeavor under *Dhanasar*'s first prong, we look to its "potential prospective impact." *Id.* at 889. Thus, as relevant here, we assess whether the specific endeavor he proposes to undertake has broader national or global significance, rather than on his experience and expertise or on the importance of the field or industry in which he proposes to engage based on his qualifications. *Id.* Here, as an engineer and CEO of his company, the Petitioner proposes to lead and expand his company by utilizing his expertise and "the latest technologies" in delivering "innovative, sustainable, and cost-effective engineering solutions." He further claims his company will be "a trusted industry leader." However, the record does not contain any evidence that his claimed innovative, industry-leading methods were or would be adopted by the industry, made any impact in the field, or otherwise have far-reaching implications. Further, the industry reports he submitted, which were also incorporated into his business plan, generally highlight the importance of the engineering, manufacturing, and infrastructure fields, rather than their significance in relation to the Petitioner's specific endeavor. Although we acknowledge that the proposed endeavor could have a positive impact on his career and business, the Petitioner has not persuasively explained, and the record, including his business plan, does not demonstrate how his work would have the broader implications for the industry and U.S. economy as he claims, beyond his business and potential customers.

The record, for instance, does not show that the proposed endeavor would have "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area," which *may* indicate national importance. *Id.* at 890. The Petitioner's business plan includes an organizational chart and a five-year plan listing him as CEO initially overseeing two employees; and by year five, six employees comprising a production manager, operations manager, designer, bookkeeper, sales and marketing associate, and engineers. The business plan projects that by the fifth year of the firm's operation, it will have a total revenue of $3.5 million, total expenses of nearly $2.9 million, and remaining net income of about $610,000. However, these figures, which the Petitioner claims represent potentially significant economic impact, lack corroborating evidence that would objectively substantiate them. Further, while the business plan also includes personal and organizational plans and general duty descriptions, the record, including his business plan, aspirational assertions, support letters, and industry reports, does not contain any evidence-based justifications for the staffing projections and the claimed need for operation expansion and increased number of employees. The record also does not reflect whether or how any of his proposed services would

actually help an economically depressed area. Even assuming the accuracy of the financial and employment projections, the evidence does not show how a small business with the stated projections indicates national economic significance. The record therefore does not establish that the Petitioner's proposed endeavor has significant potential to employ U.S. workers or will have substantial positive economic effects that may indicate national importance. Although the Petitioner continues to highlight that his proposed endeavor also will have major economic impact by *indirectly* generating hundreds of jobs and residual economic activities, the record does not support that the claimed indirect impact would be directly attributable to his proposed work.[4]

Lastly, the record also includes letters from individuals indicating a general willingness to invest in and obtain services from the Petitioner's company. However, they do not contain any detail as to the economic impact the Petitioner claims the potential investments would generate, and they do not speak to his specific proposed endeavor or how it has broader implications to the field and industry beyond his own business and clients. The support letters also lack independently corroborating evidence, as the letter writers only state their general intent without any specific terms that would be binding.

While the Petitioner continues to express his desire to contribute to the U.S. engineering industry and its economy, he has not established with specific, probative evidence that his proposed endeavor will have broader implications in his field, have significant potential to employ U.S. workers, or have other substantial positive economic or societal effects. *See Matter of Chawathe,* 25 I&N Dec. at 375-76 (holding that in reviewing the record we consider not only the quantity, but also the quality, including relevance and probative value, of the evidence). The Petitioner therefore has not demonstrated that his proposed endeavor has broader national importance as contemplated by the *Dhanasar* framework.

As the identified ground for denial, the Petitioner's inability to meet *Dhanasar*'s first prong, is dispositive of this appeal, we decline to reach the remaining appeal arguments as to the Director's findings that he also did not meet the second and third prongs of the *Dhanasar* framework. *See, e.g.*, *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.

[4] The Petitioner also submits new documents on appeal, comprising a support letter, a training certificate, and an amended business plan, which now projects by year five 29 employees (five times the initial staffing projection) and includes adjusted financial figures, also increased manyfold. But the Director's RFE specifically notified the Petitioner of the evidentiary deficiency and provided him an opportunity to submit additional evidence, in response to which he submitted, inter alia, his initial business plan. We therefore decline to consider the new documents on appeal. 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence on appeal where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it before the denial). Even if the updated business plan were considered, it also lacks explanation and independent evidence for the increased projections and does not otherwise establish national importance.