U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33360257

Date: AUG. 26, 2024

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 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 the Petitioner was eligible for EB-2 immigrant classification as an advanced degree professional, and was therefore ineligible for 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.

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.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[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.

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,[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

On appeal the Petitioner continues to assert his eligibility for both the underlying EB-2 immigrant classification and the requested national interest waiver. While we agree that the record establishes his eligibility for EB-2 immigrant classification as an advanced degree professional, upon de novo review we conclude that the Petitioner has not established eligibility for the requested national interest waiver under the *Dhanasar* analytical framework.

A. Member of the Professions Holding an Advanced Degree

The Director determined that the Petitioner was not an advanced degree professional because, while the Petitioner provided evidence of his foreign degree, the record did not contain evidence establishing the Petitioner's dates of attendance or transcripts, and the Petitioner's degree was not in the field of the proposed endeavor. Upon de novo review, we disagree and withdraw the Director's determination.

The Petitioner submitted evidence that he earned a professional title of attorney (*titulo de abogado*) degree from [redacted] along with an academic evaluation confirming his degree is equivalent to a U.S. juris doctor. Additionally, the record also contains copies of the Petitioner's transcripts from [redacted] verifying his attendance and completion of the degree in 1997. The Petitioner also provide his U.S. master's degree in administrative science, along with accompanying transcripts confirming his completion of this degree in 2006.

The Petitioner is a lawyer and therefore qualifies as a member of the professions as the term is defined at section 101(a)(32) of the Act and at 8 C.F.R. § 204.5(k)(2). Additionally, on appeal the Petitioner establishes that his educational background is related to his endeavor to foster economic development by consulting with noncitizens to invest in the United States rather than sending remittances to their home country. Accordingly, the Petitioner has established he qualifies for the requested EB-2

[2] *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).

immigrant classification as an advanced degree professional. The Director's conclusion that the Petitioner is not eligible for the requested EB-2 immigrant classification is therefore withdrawn.

B. National Interest Waiver

While the Petitioner is eligible for the EB-2 immigrant classification, upon de novo review of the record, we nonetheless conclude that the record does not establish the Petitioner is eligible for the requested national interest waiver.

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 record reflects the Petitioner intends to "foster economic growth and improve the labor market in the United States through mitigation of migrant remittances." Specifically, the Petitioner asserted that, by encouraging a reduction in remittances[3], noncitizens could instead invest their earnings and "preserve financial gains for investments inside the United States." While he acknowledged that noncitizens primarily send remittances for basic day-to-day necessities, the Petitioner indicated that "it is of great importance to the United States that the portion of remittances which is not dedicated to supply necessities focus on investment projects or other activities that generate a benefit for the American economy and not just for the destination countries." As such, the Petitioner plans to develop financial and investment knowledge in noncitizens by coordinating the development of training, conferences, consultancies and dissemination of infographics, and recommendation of investment projects. In particular, the Petitioner intends to offer his consulting services either directly or through third-party experts "to immigrants who want advice on how to invest their income in the U[nited] S[tates] while still sending a part of [their income] to relatives in other countries." According to his professional plan, the Petitioner intends to operate his endeavor in the [redacted] Florida area and indicated that he would hire up to 12 individuals by the fifth year of operations.

In support of his endeavor, the Petitioner initially provided three personal statements as well as numerous research reports and articles on remittances, investments, and financial literacy in the United States. In response to the Director's request for evidence (RFE) notifying the Petitioner that the record did not establish his eligibility for the requested national interest wavier under the *Dhanasar's* three-prong analytical framework, the Petitioner supplemented the record with additional reports on financial literacy in the United States as well as census information on [redacted] Florida.

On appeal, the Petitioner asserts that he provided "ample evidence" to demonstrate the national importance of his endeavor, and generally claims that the Director disregarded the evidence submitted in his initial filing. Specifically, the Petitioner relies on *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994) to support his assertion that the Director erred in failing to consider all the evidence in its totality. But the court in *Buletini* did not reject the concept of examining the quality of the evidence presented

[3] For the purposes of his endeavor, the Petitioner defined remittances specifically as "money or goods that [noncitizens] send back to families and friends in their country of origin."

to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. Moreover, the evidence the Petitioner claims the Director ignored are articles and reports on the importance of investment and financial literacy, particularly among the Latino community, yet the Petitioner does not explain how these articles establish the national importance of his *specific* endeavor.

Turning to our review of the record, we conclude that, while the articles and reports in the record establish the substantial merit of the Petitioner's endeavor, the record does not establish its national importance. 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.

Here, although the Petitioner's statements in the record reflect his intention to improve his potential clients' financial literacy while mitigating remittances and increasing investments in the United States, he did not demonstrate how any assistance he would provide to his potential clients would rise to the level of national importance contemplated in *Dhanasar*. For example, the Petitioner relies on the evidence in the record from government sources establishing governmental interest in furthering individual's financial literacy, but the record does not establish that his endeavor, however admirable, will result in broader implications to these initiatives. Here, while the Petitioner's services may benefit his prospective clients, in the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which may only benefit the Petitioner's clients would not have broader implications in the field. *Id.* at 893.

The Petitioner also claims on appeal that he provided ample evidence establishing the economic impact of remittances in the United States, and why it would be economically beneficial to mitigate remittances. Yet this evidence relies on the cumulative economic benefits of mitigating remittances, rather than "substantial positive economic effects" directly resulting from his *specific* endeavor. And, while the Petitioner's statements indicate he intends to employ approximately 12 employees by his fifth year of operation, he has not provided information relating to the nature of the employment, including the prospective duties of these positions, whether these employees will be full-time or part-time, or the salaries of these positions. The Petitioner has also not provided projected revenue contributable to his endeavor, or explained how it will impact the area of intended operations. Without this information, we cannot conclude that his endeavor has a significant potential to employ U.S. workers or otherwise result in substantial economic effects as contemplated in *Dhanasar*. *See Dhanasar* at 889.

In addition, while we recognize that the Petitioner has had a successful career with experience working with immigrant populations, as well as facilitating investments, 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. The issue here is whether the Petitioner has demonstrated

the national importance of his proposed endeavor. And we conclude that the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

As 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. Because the identified basis for denial is 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 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

ORDER: The appeal is dismissed.