U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33358326

Date: AUG. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that Petitioner was a member of the professions holding an advanced degree, or an individual of exceptional ability in the sciences, arts, or business. The Director further concluded that the record did not establish he merited a 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. 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 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. *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. ANALYSIS

The Director determined, in part, that the Petitioner had not established he was a member of the professions holding an advanced degree to establish underlying eligibility for EB-2 classification. In particular, the Director determined that evidence submitted by the Petitioner to establish he possessed a U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience was accompanied by incomplete certifications of translation and therefore was unacceptable to establish this criterion. Upon review, we conclude that the certificates of translation for the Petitioner's evidence are acceptable and that he possesses the foreign equivalent of a bachelor's degree in business administration and has the requisite years of experience in operating various businesses in Brazil.[4] Accordingly, the Petitioner qualifies for EB-2 immigrant classification as a member of the professions holding an advance degree. While the Director also determined that the Petitioner was not an individual of exceptional ability in the sciences, arts, or business, because we conclude that the Petitioner is an advanced degree professional, we need not reach the question of whether he is an individual of exceptional ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and

[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).

[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 Brasil v. Sec'y of DHS*, 28 F.4th 1189, 1194 (11th Cir. 2022) (concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[4] The form instructions for the Form I-140 at the time the Petitioner submitted his petition required that for any translation the "translator must sign a certification that the English language translation is complete and accurate, and that he or she is competent to translate from the foreign language into English." The Director concluded that the translator certifications for the Petitioner's academic records and employment verification letters did not state that the translations were "complete." Our review of the record, however, shows that the translator certifications for these documents included language stating that the translations were "true, accurate, and complete."

agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

The Director also determined that the Petitioner did not establish eligibility for a discretionary national interest waiver because he did not establish that his proposed endeavor has national importance; that he was well positioned to advance the proposed endeavor; and that on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification, as required under the *Dhanasar* analytical framework described above.

On appeal, the Petitioner initially claims that the Director erroneously applied the law and improperly "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, the Petitioner does not specify what these novel requirements are, nor identify a specific error in the Director's application of the law. The Petitioner also makes general assertions that the Director did not apply the proper standard of proof and did not give due regard to the evidence in the record. However, the Petitioner does not support these assertions with specificity as to the record or to the Director's conclusions, and our review indicates that the Director properly considered the relevant evidence under the applicable preponderance of the evidence standard.

The Petitioner also claims, through counsel, that his proposed endeavor of opening a supermarket is nationally important because it supports the U.S. economy by creating jobs, enhancing the food supply chain, and contributing to regional and potentially national economic growth. For the reasons stated below, however, we conclude that the Petitioner has not established his proposed endeavor has national importance.

In determining whether the proposed endeavor has national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further stated that we consider the proposed endeavor's "potential prospective impact," and "look for broader implications" noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Further, "[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.

The Petitioner provided a personal statement in support of his Form I-140 wherein he stated his proposed endeavor is to develop a supermarket located in Florida that distributes food products, including imported products from Brazil, Latin America, and Europe to the U.S. market. In the statement he claimed generally that the endeavor will generate jobs and thereby contribute to the national economy.

The Petitioner also provided a business plan wherein he claimed the supermarket would initially target customers in [redacted] Florida, and after two years begin to expand to three other cities in Florida. Including himself, the Petitioner intends to employ up to 35 employees in the first year of operation, and by year five of operations, claims the supermarket will have created 80 jobs.

Additionally, the Petitioner submitted, in part, letters of recommendation and industry articles and reports. These submissions generally speak to the Petitioner's character and business experience, and the importance of immigration and entrepreneurship in the United States. The Petitioner also submitted an expert opinion letter that addresses the importance of the Brazilian economy and the Petitioner's background and experience.

We acknowledge the evidence of the Petitioner's experience in the field of business management, as well as the overall impact food distribution has on the economy of the United States. Our focus, however, is on the specific endeavor that the Petitioner proposes to undertake, rather than his credentials and experience or the importance of the industry or profession in which the individual will work. *Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner has not provided sufficient information and evidence to demonstrate the benefit of opening a supermarket in Florida, while potentially benefitting customers and the local community in which it is located, has broader implications in the food distribution industry in the United States or globally. Additionally, the Petitioner's general assertions regarding the contributions his proposed endeavor will make to the food supply chain and national economy, and the unsupported projections in his business plan, are insufficient to demonstrate his proposed endeavor is nationally important. Finally, even if we were to conclude that the financial projections in the business plan regarding revenue growth and job creation are well-founded, which we do not, the Petitioner does not establish that the revenue or number of jobs created by his proposed endeavor initially, or over a five-year period, would result in *substantial* positive economic effects, nor that his business would be in an economically depressed area.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, requiring that he demonstrate his proposed endeavor is nationally important. We therefore conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. As noted above, the Director also concluded that the Petitioner did not establish he was well positioned to advance his proposed endeavor, or that 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 the remaining *Dhanasar* prongs. While the Petitioner contests these conclusions on appeal, because our determination that the Petitioner's proposed endeavor is not nationally important is dispositive of his appeal, we decline to reach and hereby reserve the appellate arguments on these issues. *See INS v. Bagamasbad*, 429 U.S. at 25; *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.