U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33358458

Date: AUG. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial analyst, seeks employment-based second preference (EB-2) immigrant classification as either an advanced degree professional 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 petition, concluding that although the Petitioner qualified as an advanced degree professional, he 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. 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. 8 C.F.R. § 204.5(k)(2).

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 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,[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

A. EB-2 Visa Classification

As indicated above, the Petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. The Director determined that the Petitioner is a member of the professions holding an advanced degree. However, upon de novo review, we disagree.

In addition to the definition of "advance degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." The record indicates that the Petitioner's foreign baccalaureate degree is equivalent to a U.S. baccalaureate degree in business administration. However, the Petitioner did not submit the evidence required to establish five years of qualifying work experience. While the Petitioner provided letters from his former employers, they show that he obtained his experience prior to January 2019, the date he obtained his baccalaureate degree. Therefore, the letters do not demonstrate *post-baccalaureate* experience. As such, the Petitioner has

[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 also 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 to be discretionary in nature).

not established by a preponderance of the evidence that he is a member of the professions holding an advanced degree and we withdraw the Director's determination on this issue.

In addition, while the Petitioner initially claimed he qualifies for EB-2 classification as an individual of exceptional ability, the Director did not address this issue. Since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether he qualifies for EB-2 classification as an individual of exceptional ability for future consideration should the need arise. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible).

B. National Interest Waiver

The Petitioner proposed to continue in his career in the United States as a financial analyst in the financial planning and advice industry. He stated that his "proposed endeavor offers direct benefits to commercial and investment activities, which will substantially increase revenues on behalf of the U.S. economy, thus driving foreign investment opportunities across the nation, facilitating the access of funds for U.S. residents, and increasing the number of new jobs in the U.S. domestic market."

The Director did not make a determination as to whether the Petitioner met substantial merit; however, evidence in the record establishes that the Petitioner's proposed endeavor has substantial merit. The Director did conclude that the Petitioner did not establish that his proposed endeavor had national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

On appeal, the Petitioner contends the Director did not give due regard to the evidence submitted, specifically his resume, professional plan, documentation of his work in the field, letters of recommendation, and industry reports and articles. He asserts that he has demonstrated the national importance of his proposed endeavor consistent with the first prong of the *Dhanasar* framework.

In support of national importance, the Petitioner asserts that his endeavor "is projected to significantly benefit the U.S. economy by enhancing financial market competitiveness, supporting small to medium-sized enterprises, and fostering substantial revenue and GDP growth" and his "plan to facilitate profitable U.S.-Brazil business relations, enhance investment strategies, and improve financial literacy will benefit national economic policies and strategies." The Petitioner also states his "activities are projected to generate significant tax revenues through high-value financial transactions and advisory services, directly supporting public services and infrastructure development" and "endeavor directly supports national priorities such as economic recovery strategies, enhancing financial market robustness, and diversifying the U.S. investment portfolio internationally." The Petitioner, however, has not provided evidence demonstrating that his proposed endeavor would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the asserted

potential prospective impact of his proposed endeavor stands to offer broader implications in his industry or to generate substantial positive economic effects. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his future customers and employer(s) to impact his field of financial services, the economy, or U.S. societal welfare more broadly at a level commensurate with national importance.

The Petitioner also did not show that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show any benefits to the U.S. regional or national economy resulting from his financial analyst position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

In addition, the Petitioner relies, in large part, on his more than seven years of experience in the field of finance to establish the national importance of his proposed endeavor. However, the Petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed endeavor.

Regarding the articles about the importance of the financial services industry, when determining national importance, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In *Dhanasar*, we further 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.*

As to the articles about the shortage of financial professionals, the national shortage of financial professionals is not, in and of itself, sufficient to establish the national importance of the Petitioner's endeavor. Further, the Department of Labor directly addresses U.S. worker shortages through the labor certification process.

Finally, we reviewed the Petitioner's letters of recommendation where the authors praise the Petitioner's abilities in the financial services industry and his personal attributes, indicating that he would be an asserted asset to the workplace. However, the letters of recommendation do not offer persuasive detail concerning the impact of his proposed endeavor and how it would extend beyond his clients. As such, the letters are not probative in demonstrating the Petitioner's eligibility under the first prong of *Dhanasar*.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them. *See INS v. Bagamasbad,* 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not

done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.