U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33060647

Date: AUG. 28, 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 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 the record did not establish the Petitioner's eligibility 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.

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

[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.

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. ANALYSIS

The Director determined that the Petitioner qualified for the requested EB-2 immigrant classification as an individual of exceptional ability, but further concluded he did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. 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.* In *Dhanasar* we said that 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 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

The Petitioner is the cofounder and chief executive officer of a company specializing in developing search and find methodologies using artificial intelligence (AI) and machine learning (ML) technology. According to the Petitioner, he intends to "continue to work as a [b]usiness [e]xecutive and [r]esearcher focusing on creating, deploying, and managing [s]earch & [f]ind [m]ethodologies in

[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).

various subfields." Through his company, he currently uses his search and find methodologies in the minerals exploration sector to "detect concealed mineral deposits in underexplored covered terrains," and plans to adapt his company's search and find discovery platform to discover additional renewable energy sources. According to the Petitioner, his company's platform "demonstrated an improvement of two orders of magnitude in targeting critical minerals deposits, lowering exploration costs by 90% and shortening the time required from initial exploration to the start of a drilling campaign from years to just several months." The Petitioner's statements in the record indicate that his company does not plan to "provid[e] a service[,] sell[] its technology," or "offer[] its technology as a service to third parties." Rather the Petitioner intends to "generat[e] significant value by using [the] technology to [identify and] build a portfolio of mineral assets," and in turn, enter into agreements with mining partners to initiate the mining of theses targeted areas, granting the company a portion of ownership over the minerals discovered. In sum, he intends to continue to pinpoint targets to "deliver a portfolio of high-confidence prospect-scale targets with secured ground, ready to be drilled in a short period of time," and then outsource the drilling and retrieval of these minerals by partnering with mining companies to "subsequently earn purely through royalties and minority equity."

In support of his endeavor, the record includes a personal statement, various articles containing interviews with the Petitioner regarding his current company, government publications relating to critical and emerging technologies, government publications detailing the federal government's interest in increasing the production of critical minerals to ensure energy security, and a copy of a patent application submitted by the Petitioner for his search and find methodologies.

After issuing a request for evidence (RFE), the Director denied the petition, concluding that the Petitioner did not establish eligibility for the requested national interest waiver under the *Dhanasar* analytical framework. Specifically, regarding the national importance of the endeavor, the Director concluded that the Petitioner had not established his endeavor would result in broader implications to the field, or otherwise result in a significant potential to employ U.S. workers or other substantially positive economic effects. The Director also explained that broad assertions, without supporting evidence, do not satisfy a petitioner's burden of proof or otherwise establish eligibility for the national interest waiver.

On appeal, the Petitioner dedicates significant discussion to the claimed deficiencies in the Director's RFE, including the Director's request for additional evidence relating to the Petitioner's eligibility for EB-2 immigrant classification as an advanced degree professional, even though the Petitioner claimed eligibility for the classification as an individual of exceptional ability. While we recognize this, the Director did nonetheless inform the Petitioner that the record did not establish eligibility for the requested national interest waiver under the *Dhanasar* analytical framework and granted the Petitioner an opportunity to supplement the record. Additionally, although the regulation at 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE, the regulation permits the Director to deny a petition for failure to establish eligibility without first having to request evidence regarding the ground or grounds of ineligibility identified by the Director. As such, even if the Director had erred as a procedural matter in the issuance of the RFE, it is not clear what remedy would be appropriate beyond the appeal process itself, which provided the Petitioner another opportunity to supplement the record and establish that he is eligible for a national interest waiver. While the Petitioner submitted a brief, he did not supplement the record with new evidence on appeal.

Additionally, although we agree with the Petitioner that the Director did not directly discuss every piece of evidence in the record in their decision, he has not shown how the evidence in the record establishes the national importance of his endeavor. It is not enough to demonstrate errors in an agency's decision; the Petitioner must also establish that they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022). The Petitioner does not establish that these materials are sufficient to demonstrate his proposed endeavor has national importance. Because, as discussed herein, we conclude that the Petitioner has not demonstrated he was prejudiced by these alleged errors, even if we agreed, such a lapse appears harmless and is insufficient grounds upon which to base this appeal. The party that "seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Id.*

The Petitioner also asserts that the Director erred in citing to the *Kazarian* two-step review standard, asserting that this analysis is only applicable to EB-1 petitions, not his EB-2 national interest waiver request. However, as stated previously, USCIS has confirmed that the *Kazarian* two-step process should be applied to evaluate whether a petitioner has established themselves as a noncitizen of exceptional ability.[4] And, the Petitioner claims that because the Director immediately followed their discussion of the *Kazarian* standard by describing the *Dhanasar* standard, "it is unclear whether the officer applied both standards to the case," and therefore "illustrates the poor quality of the decision." We disagree. In their decision, the Director correctly explained that, if an individual establishes eligibility under the *Kazarian* two step analysis for EB-2 immigrant classification as an individual of exceptional ability, then the Petitioner would *also* need to satisfy the *Dhanasar* standard to establish eligibility for the requested national interest waiver. As such, we do not agree with the Petitioner's assertion that the Director's discussion of both standards "constitutes a major legal error."

Turning to our de novo review of the record, we agree that while the evidence in the record, including multiple government reports discussing the U.S. government's interest in critical minerals, demonstrates the substantial merit of the Petitioner's endeavor, it does not establish its national importance.

The Petitioner asserts that the Director's decision did not address any of the evidence submitted regarding "the national importance of AI research or current (or potential) effects of [s]earch and [f]ind methodologies in the thorough exploration and identification of critical minerals in the U[nited] S[tates]." However, this evidence establishes the importance of the Petitioner's field rather than his specific endeavor. When evaluating the national importance of a proposed endeavor, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. And the Petitioner did not explain and support with relevant and probative evidence how his proposed endeavor will broadly impact the field.

In *Dhanasar*, we said that in evaluating national importance we "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, such as those resulting from certain improved manufacturing processes or medical advances." Here, the record does not contain sufficient

[4] *See generally*, 6 *USCIS Policy Manual*, *supra*, F.5(B)(2).

information and evidence to explain how his proposed activities to rely on AI and ML methodologies to improve the accuracy of locating critical minerals, and then contracting the drilling to other mining companies, will have broader implications within his industry. And although the Petitioner has claimed that he intends to continue his research and development of new methodologies and "further[] knowledge about how AI and [ML] can be used" in the field, beyond his own assertions, the record does not show how any proposed research or new methodologies, even if realized, will be disseminated and otherwise result in a broader impact to the field. In fact, as previously stated, the record establishes that the company does not provide their platform to the wider industry, but rather limits the benefits to their direct partners. In other words, the Petitioner has not provided documentary evidence to establish that his operations will impact the field more broadly, rather than provide direct benefit to his company and his partners.

And we acknowledge the Petitioner's reference to USCIS policy recognizing the importance of "STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress,"[5] but the Petitioner has not shown that he has an advanced STEM degree as discussed in this policy. Nor has he shown that his endeavor will foster progress in STEM technologies or result in broader implications to his field. For example, he asserts that his discovery platform and his company have been "widely impacting the mineral discovery field," but the record does not contain objective, credible, and probative evidence to support these assertions.[6] The Petitioner has not explained, for instance, whether other mining companies are similarly relying on AI and ML technologies that are already widely available in the market to identify potential drilling locations, or if his company's platform is indeed analogous to the "improved manufacturing processes or medical advances" contemplated in *Dhanasar*. As such, the record does not show that the benefits resulting from the Petitioner's proposed business endeavor would have implications beyond the limited benefits to the Petitioner and his partners. This is akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and not wider population. In *Dhanasar*, we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. By extension, activities which only benefit a small subset, like the Petitioner's proposed endeavor, would not rise to a level of national importance.

We also agree with the Director's conclusion that the Petitioner did not establish that his endeavor will result in a significant potential to employ U.S. workers or lead to other substantially positive economic benefits contemplated in *Dhanasar*. *See id.* Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. On appeal, the Petitioner asserts that his company is valued at $56,000,000 and employs U.S. workers, but the evidence indicates that the company currently has five employees, and relies on multiple contractors, yet it is not clear if these are full-time or part-time positions. And the Petitioner has not explained how the company's employment of U.S. workers and any anticipated revenue will impact the area of intended operations, nor has the Petitioner provided evidence to substantiate his assertions regarding the valuation of his company. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

[5] 6 *USCIS Policy Manual*, *supra*, F.5(D)(2).

[6] The Petitioner is not required to show that his endeavor will be successful to establish its national importance under the first prong of the *Dhanasar* framework, but the record should contain objective evidence and information corroborating his assertions of its prospective improvement to the processes used in the field.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

B. EB-2 Classification as an Individual of Exceptional Ability

While the appeal must be dismissed as the Petitioner has not satisfied prong one of the *Dhanasar* framework, upon a de novo review of the record, we also withdraw the Director's determination that the Petitioner qualifies for the requested EB-2 immigrant classification as an individual of exceptional ability because the record does not support such a conclusion.

The Petitioner asserted eligibility for the requested EB-2 immigrant classification as an individual with exceptional ability by claiming he met three of the six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii): ten years of full-time experience in the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B), commanding a salary demonstrating exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(D), and providing evidence of recognition for achievements and significant contributions to the industry at 8 C.F.R. § 204.5(k)(3)(ii)(F). In their decision, the Director determined the Petitioner satisfied at least three of the six evidentiary criteria, and therefore concluded that the Petitioner established himself as an individual of exceptional ability. But the Director did not clarify which criteria the Petitioner met, nor did they discuss how the evidence established he met each criterion. And, because the Director did not conduct a final merits determination, the decision does not explain how the totality of the evidence demonstrates the Petitioner has a degree of expertise significantly above that ordinarily encountered in the field.[7] As such, for the reasons discussed below, we conclude that the record does not establish that the Petitioner qualifies for EB-2 classification as an individual of exceptional ability, and we withdraw the Director's determination to the contrary.

First, as it pertains to documentation of ten years of full-time experience in the specialty, the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires "[e]vidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought." Additionally, such letters "shall include a specific description of the duties performed." 8 C.F.R. § 204.5(g)(1). Here, the letter from Q-D- is sufficient to establish his employment from February 2012 to April 2020. However, while the Petitioner also relies on a self-authored letter confirming his employment with V-D-, as well as letters from former colleagues with the [redacted] he has not established that they meet the regulatory requirements. Specifically, he did not show that these letters are from "current or former employer(s)." And because they lack specificity regarding the duties performed and the dates of employment, they are insufficient to account for the remaining required full-time employment in the occupation sought. Without more, we cannot conclude that the record shows the Petitioner satisfies this criterion.

Additionally, to satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) relating to recognition for significant contributions to his field, the Petitioner submitted additional letters of recommendation describing his involvement in the development of AI solutions relevant to the search and find methodologies in the mining industry. However, while the letters commend the Petitioner for his work, and assert that due to his work his former employer was "positioned as a forerunner in the

[7] *See generally,* 6 *USCIS Policy Manual*, *supra*, F.5(B)(2).

mining exploration industry," the record does not contain documentary evidence to corroborate this assertion. Similarly, the letter from Prof. J-W- who "collaborated" with the Petitioner, serving as a senior technical consultant for his mineral discovery platform and who worked on a steering committee with him for a postdoctoral research project, does not detail how his work resulted in recognition for achievements and significant contributions to the industry or field. And the letter from a [redacted] representative confirmed that "three [redacted] students participated in an action learning class on a project" with the Petititioner's former company, but the letter does not explain the Petitioner's contributions to the field.

The Petitioner also provided evidence of his claimed commendations from the [redacted] for his work in the field in the form of two photographs of commendation medals. However, the medals do not name the Petitioner, and as such, it is not clear to whom these medals were issued. Moreover, even if corroborated, the Petitioner has not explained the significance or the contribution which led to these commendations or how they establish his significant contributions to the field. Additionally, while the Petitioner provided evidence that he received the [redacted] and provided articles explaining the importance of this prize in general, the Petitioner did not explain why he received this prize to ascertain whether it was due to significant contributions to his field.

To establish his recognition of expertise in his field, the Petitioner also submitted letters from former [redacted] and other military personal commending him for developing and implementing successful strategies during his time with the [redacted], but they do not identify specific contributions he made to the field, rather than implementing successful strategies for the [redacted] And the articles relating to the technological advances used by the [redacted] including search and find methodologies, do not mention the Petitioner, and were published years after the Petitioner left the [redacted]

The Petitioner also submitted evidence that he was invited by one of his company's investors to speak at the [redacted] Investor Advisory Board quarterly forum, but he did not explain how participating in this forum establishes his contributions to the field. And while the record contains a copy of a patent application to indicate that the Petitioner is [redacted] the patent application was submitted in 2018, and according to publicly available data from the United States Patent Office, the application was abandoned in 2020, prior to the filing of this petition. As such, the abandoned patent application does not establish the Petitioner's contributions to his field, nor does it establish he introduced new methodologies to the field as claimed.

Accordingly, the record does not establish the Petitioner qualifies for EB-2 immigrant classification as an individual of exceptional ability, and we therefore withdraw the Director's determination. As the Petitioner has not shown that the proposed endeavor is of national importance under prong one of the *Dhanasar* analytical framework, it would serve no legal purpose to issue a request for evidence for further investigation and analysis of the Petitioner's categorical eligibility for EB-2 classification.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a an individual of exceptional ability. Furthermore, the Petitioner has not met the requisite first prong

of the *Dhanasar* analytical framework, and therefore we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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.