U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31660725

Date: JUL. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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 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 establish eligibility for a national interest waiver, a 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director's finding on this issue is in the Notice of Intent to Deny (NOID) issued on October 13, 2023. The Petitioner submitted a Brazilian degree of Bachelor of Accounting Sciences with academic transcripts and credential evaluation showing that he entered his baccalaureate program in 2017 and completed the course on July 8, 2019. The Petitioner also submitted a lato sensu diploma in Forensic Accounting, training certificate, and employment letters demonstrating that he has five years of post-baccalaureate experience in the specialty. The Director determined that there was no need to evaluate whether the Petitioner also qualified as an alien of exceptional ability. We note that the Director did not discuss the evidence the Petitioner submitted which established that he held an advance degree. In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2). A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). Based on the information contained in the record, we conclude that the Petitioner has not met his burden to establish the U.S. equivalency of his foreign education in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). The AACRAO EDGE database determines whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge (last visited October 18, 2023). Only diplomas awarded after four or five years of study are equivalent to a bachelor's degree in the United States. It also contains extensive information regarding the Brazilian educational system, including *latu sensu* certificates. The database states that *lato sensu* programs are for professional development and specialization, and lead toward professional certificates instead of graduate degrees. As discussed above, the Petitioner has not established that he completed at least four years of study towards his Bachelor of Accounting Science degree. Therefore, the information from the EDGE database, together with the discussion above, shows that the Petitioner does not hold a degree that is the foreign equivalent of a baccalaureate degree from an accredited university in the United States. We therefore withdraw the Director's finding that the Petitioner holds an advanced degree.

The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director

concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of *Dhanasar*.[2] We agree with the Director.

Although the Petitioner asserts on appeal that the Director's decision "contains numerous erroneous conclusions of both law and fact," he does not indicate where the Director misapplied law or policy in the decision. The Petitioner mainly contends that he has previously provided sufficient evidence to show the national importance of his proposed endeavor.

In determining whether the proposed endeavor has national importance, we focus on the "specific endeavor that the foreign national proposes to undertake" and consider its potential prospective impact. *Id.* at 889. We noted that "we look for broader implications" of the proposed endeavor and 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 889-90.

The Petitioner's professional plan dated November 2022 states he intends to "perform as an Accountant, utilizing all the knowledge he has acquired in the academic program and courses he completed, along with his professional experience, which has considerably contributed toward the successful development of his work efficiently, guaranteeing the best results." And he also "intends on improving his performance by taking new courses according to the demand in the field, which is constantly evolving." In response to the Director's notice of intent to deny (NOID), the Petitioner submitted an updated professional plan dated October 2023 and expanded his proposed activities to include the following benefits for his future clients:

> Reduce tax liabilities and optimize fiscal strategies for businesses . . . Enhance financial performance and profitability of businesses . . . Provide accurate and reliable accounting reports and statements for decision-making . . . Conduct forensic accounting investigations and analysis for legal purposes . . . Assist businesses in complying with accounting standards and regulations . . . Advise businesses on best practices and solutions for accounting issues . . .

And the Petitioner proposes to use various tools, techniques, and methods to offer the following range of services to his clients in Massachusetts: financial management, fiscal management, accounting management and forensic accounting.

However, the Petitioner's discussion of his proposed activities entails typical work of an accountant, and the evidence as submitted does not demonstrate that his accounting techniques or innovations are unavailable in the United States or better than that which is already offered in the United States. While an individual employer or company may benefit from his accounting services, the Petitioner has not offered any evidence or persuasive explanation for how this individual benefit rises to the level of national importance or will impact the field more broadly. In *Dhanasar*, "[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." *Id.* at 889.

[2] The Director also found that the Petitioner did not meet the second or third prong of the *Dhanasar*'s analytical framework.

We reviewed the Petitioner's updated resume and professional recommendation letter from [redacted] the general manager of [redacted] in Massachusetts who stated that after a few conversations he could observe that the Petitioner "possessed essential skills that any company would need to manage its workflows, organize it finances and apply accounting techniques," and he expressed an interest in acquiring his services. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* Although the letter generally states that the Petitioner ". . . is an exceptional professional in his field, with a unique aptitude for driving the development of business and accounting as a whole, providing the best solutions when faced with a challenge, always with promptness, efficiency, diligence, a commitment to delivering concrete results and the potential to generate significant and consistent revenues, making him a true role model in the industry," it does not offer persuasive details concerning the Petitioner's endeavor or its impact extending beyond companies that he will serve. Hence, the advisory opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor.

Another professional reference letter from [redacted] praised the Petitioner's abilities as an accountant and stated that he completely restructured his company in Brazil, showed exceptional dedication and competence in contributing to the management of the company and the because of the Petitioner's work, they faced the pandemic without financial difficulties or the need to lay off service providers. While the recommendation letters evidence the high regard for the Petitioner and his work, they do not discuss the Petitioner's proposed endeavor or specific impact of his endeavor. For example, [redacted] explained that the Petitioner championed a value provisioning system where they set a goal of 30% of funds to be allocated to protect the company from possible future challenges. And [redacted] opined that the Petitioner's value provisioning methodology could make a significant contribution to the economy by preparing companies to face economic crises, among other attributes. However, the act of keeping an amount of money available to be used in case of a possible future need did not appear to have broader implications for our country when such activity is already being utilized in businesses across the nation. Moreover, the letter covers the Petitioner's prior work and accomplishments and relate more to the second prong rather than the first prong of *Dhanasar* framework. *Id.* at 890.[3]

The Petitioner further contends that his proposed endeavor has a transformative potential, and that the Director overlooked the broader implications of his work in integrating AI in a manner that rises to the level of national importance. He argues that by introducing AI into accounting services, he will address the labor shortage concern by revolutionizing the accounting profession. He argues that his

[3] On appeal, the Petitioner claims to submit an additional letter of recommendation from [redacted] However, this letter was not received. Regardless, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we would not consider it for the first time on appeal even if it was received. *See* 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 submitted on appeal because "petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

shift in the industry has the potential to generate new jobs and increase economic efficiency particularly in economically distressed areas in Massachusetts such as [redacted] The Petitioner explains that his initiative aligns with global goals, particularly the United Nations Sustainable Development Goals (SDGs) which are recognized internationally as a roadmap for addressing global challenges. We acknowledge that assisting any companies with financial management, fiscal management, accounting management, and forensic accounting has substantial merit. However, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor.

Here, the Petitioner claims that he ". . . plans to accumulate invaluable experience by working for other companies for a specified period of 3.5 years, during this time, he will be conducting field research to identify errors and shortcomings caused by the unpreparedness or negligence of accountants and companies that fail to submit accurate financial information." Ultimately, the Petitioner proffers that ". . . [h]is initiative is not only contributing to a more equitable and prosperous society but also highlighting the crucial role that the business sector plays in achieving global sustainability and justice by 2030." While any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how working for a company or companies as an individual accountant, or owning an accounting firm generates such significant economic activity that rises to the level of "substantial positive economic effects." *Dhanasar*, 26 I&N Dec. at 890. The Petitioner also emphasizes his knowledge, skills, education, and experience but they are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* 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. Similarly, we conclude that the Petitioner has not established that his proposed endeavor has national importance.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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).

III. CONCLUSION

As the Petitioner has not shown eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, nor has he met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.