U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31455384

Date: JUL. 03, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, National Interest Waiver)

The Petitioner, with his experience in the beverage bottling industry, seeks employment-based second preference (EB-2) immigrant classification as 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 petition, concluding that the Petitioner had not shown that a waiver of the required job offer, and thus of the labor certification, would be in the national interest because the record did not establish the Petitioner's proposed endeavor is of national importance or that, on balance, it would be beneficial to the United States to waive the requirements of labor certification. 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 a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification under section 203(b)(2)(A) of the Act, 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.

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 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 a degree of expertise significantly above that ordinarily encountered in the field.

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. ADVANCED DEGREE

The Director determined the Petitioner established he qualifies as a member of the professions holding an advanced degree as required for EB-2 classification. Specifically, the Director found the Petitioner submitted evidence that he holds at least a bachelor's degree and five years of experience in the field without further discussion of the evidence.

However, the record does not contain evidence that the Petitioner holds a bachelor's degree. Rather, the Petitioner submitted a copy of a high school diploma with a concentration in mechanics, work-related certifications, and evidence of work experience. The Petitioner also submitted an evaluation equating the Petitioner's years of work experience to a bachelor's degree in quality systems management. However, the record does not reflect the Petitioner holds the requisite baccalaureate degree to qualify as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(1), (2). The regulations at 8 C.F.R. § 204.5(k)(2) require submission of a bachelor's degree or foreign equivalent degree; petitioners cannot combine experience, training, or education to substitute for or supplement this requirement. As the Petitioner has not established himself as an advanced degree professional, the Director's finding on his eligibility for the underlying EB-2 visa classification is withdrawn.

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[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 aliens 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 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 Petitioner previously asserted before the Director that he qualifies for the underlying immigrant classification as an individual of exceptional ability in the sciences, arts, or business. But as the Petitioner has not demonstrated the national importance of the proposed endeavor, as outlined below, we reserve the Petitioner's arguments regarding whether he qualifies for EB-2 visa classification as an individual of exceptional ability.

III. NATIONAL INTEREST WAIVER

The Petitioner intends to operate both as a business developer and consultant in the U.S. bottling industry and also enter this industry himself through his own company, [redacted] The Petitioner asserts his extensive experience in the food and beverage industry, including as a quality consultant, allowed him to increase revenue for his clients in Brazil. The Petitioner plans to bring this same expertise and profitability to the United States. The Petitioner believes he can offer production efficiencies and development, such as bottle shapes that are lightweight and carbon efficient, to the bottling industry.

A. Substantial Merit and National Importance

The first 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner established the substantial merit aspect, the initial half of the first prong.

However, the Petitioner has not met his burden of demonstrating the proposed endeavor is of national importance. The Director determined the Petitioner has not established his endeavor sufficiently extends beyond his own company, employers, and clients; or offers original innovations that contribute to advancements or has broader implications in the field. The Director also found the Petitioner did not demonstrate benefits to the U.S. regional or national economy from the Petitioner's proposed endeavor would rise to the level of substantial positive economic effects contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner cites to an article predicting substantial growth in the beverage bottling and filling industry. The Petitioner also asserts his submitted business plan evidences his company will have substantial positive economic effects, both nationally and globally. The record contains an eight-year plan for the Petitioner's business endeavor reflecting intent to employ up to 12 employees and obtain 620,000 dollars in investments. However, the Petitioner did not provide any supporting evidence corroborating these projected employment and investment figures. Further, the Petitioner did not meet his burden of demonstrating how these projections, even if credible and plausible, result in benefits to the regional or national economy to the level of "substantial positive economic effects," as contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner contends his particular work expertise will modernize the bottling industry, increase efficiency, and lessen environmental impact by making containers more recyclable. The Petitioner states that he intends to consult for [redacted] a glass manufacturing company in the United States; the

record contains an unsigned contract and consultant invitation from [redacted] to the Petitioner. The Petitioner claims [redacted] has been applying global glass innovations at the national level, including eco-friendly and sustainable glass with lower carbon emissions. The Petitioner contends that since he would be improving manufacturing processes through his consultation work with [redacted] he has established the national importance of his endeavor under *Dhanasar*. A 2023 letter from [redacted] human resources indicates the Petitioner would be employed to lower product wastage, consumer complaints, and internal workforce issues. We acknowledge *Dhanasar* states an endeavor's national importance may be established by certain improved manufacturing processes. *Id* at 889. However, the matter here is not whether improving manufacturing processes is nationally important but rather, whether the Petitioner's specific, proposed endeavor as business developer and quality consultant in the bottling industry has national importance. Here, the Petitioner has not established continuing his work in quality control, resulting in manufacturing performance and efficiency for his clients, rises to the level of national importance. Though the Petitioner asserts his role in developing eco-friendly glass bottles with lower carbon emissions, the record does not detail or include evidence of the Petitioner's intended role in this respect or how it has broader implications for our country. Further, the letters of support submitted on behalf of the Petitioner regarding his knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id*. at 890. Overall, the Petitioner has not demonstrated through supporting documentation how his endeavor sufficiently extends beyond his prospective client or employees, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

B. Additional *Dhanasar* Prongs

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 applicants do not otherwise meet their burden of proof). Here, the Director found the Petitioner established he is well-positioned to advance his proposed endeavor, in satisfaction of the second *Dhanasar* prong. Our de novo review of the record does not appear to support this finding; however, we will reserve this issue and not further consider the Petitioner's eligibility under this or the third prong as our determination the Petitioner did not satisfy the first *Dhanasar* prong is dispositive of this appeal.

ORDER: The appeal is dismissed.