U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31111590

Date: JUL. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a real estate investment consultant, seeks employment-based second preference (EB-2) immigrant classification 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 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 that the proposed endeavor was of national importance or that it would be beneficial to the United States to waive the requirements of a job offer and 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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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.

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,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and

- 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.

II. ADVANCED DEGREE

The Petitioner asserts that he qualifies for an advanced degree professional classification by virtue of foreign education that he claims is equivalent to a U.S. Juris Doctor degree, in accordance with 8 C.F.R. § 204.5(k)(3)(i). The Director determined that the Petitioner was a member of the professions holding an advanced degree. After reviewing the record, we disagree with the Director's determination.

As noted above, a petition for an advanced degree professional must include evidence that a petitioner possesses a "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." 8 C.F.R. § 204.5(k)(2). In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A).

The Petitioner graduated from the [redacted] in 1993 with a Titulo de Licenciado en Derecho. The transcript presented reflects that the Petitioner completed four and a half years of study. He also presented an evaluation of his academic record from [redacted] a Senior Evaluator at Silvergate Evaluations. The evaluation states that the Petitioner's Titulo de Licenciado en Derecho is equivalent to the U.S. Juris Doctor degree. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Still, 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.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* The evaluator, in part, based his analysis on his review of the Electronic Database for Global Education (EDGE),[2] an online resource regarding foreign educational equivalencies. The evaluation states that according to EDGE the Petitioner's degree "represents attainment of a level of education comparable to a first professional degree…in the United States, namely a Juris Doctor." Upon review, we do not agree the evaluation Petitioner provided.

We reviewed EDGE. It does not support the evaluator's statement. According to EDGE, a Licenciado en Derecho (Licentiate in Law) is "awarded upon completion of a 4-year, 4 ½-year, or 5-year program of university study in law" and "represents attainment of a level of education comparable to a bachelor's degree in the United States." Thus, though we agree the Petitioner can establish he has a bachelor's degree, the record lacks evidence that the Petitioner has obtained a bachelor's degree and

Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is a non-profit, voluntary association of more than 14,000 professionals in more than 40 countries. *See* AACRAO, *Who We Are,* https://www.aacrao.org/who-we-are.

an advanced degree as needed to qualify as an advanced degree professional. 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate").

We observe that as the Petitioner has demonstrated he has the equivalent of a bachelor's degree, he could still qualify as an advanced degree profession if he can show at least five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(2). This evidence must be in the form of letters from current or former employers and must include the name, address, and title of the writer, and a specific description of the duties performed by the individual. Although the Petitioner has presented several employment verification letters from former employers, none of them comport entirely with the requirements and are thus not sufficient to establish five years of experience.

In light of the above, we disagree with the Director's conclusion that the Petitioner has established that he is an advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(3)(i). Nonetheless, because the Petitioner was not on notice of these issues, this does not form the basis of our dismissal. The Petitioner must address and resolve this in any further filings.

III. NATIONAL INTEREST WAIVER

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. 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. 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. *Dhanasar*, 26 I&N Dec. at 889.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner's proposed endeavor statement submitted with the initial application, states that he intends to establish [redacted] a "platform, to link business opportunities in residential, multifamily, commercial, and industrial real estate, in the United States to individual investors in Latin America." The Petitioner will act as the company's principal consultant. According to the Petitioner's business plan, investors and real estate developers will use the company's website to find each other and create business relationships. The company will then provide coaching and support for investors through the financial, legal, and administrative processes of making an investment in the United States.

In determining 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." *See Dhanasar*, 26 I&N Dec. 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.* 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. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the potential prospective impact of his work. 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. 26 I&N Dec. at 893.

Here, the Petitioner has not described how his business providing consulting for foreign investors in U.S. real estate via a digital platform will have a broader impact on the field beyond the individual clients he will assist. The appeal brief argues that his proposed endeavor is nationally important because it "will benefit the foreign investment in the US on behalf of Latin American businesses." Nonetheless, this statement neglects to explain how the company's goal facilitating foreign investment will impact the real estate field at a nationally important level. The brief further contends that because the endeavor involves technology and digitization, which are subjects of U.S. government initiatives and regulations, the endeavor is nationally important. This argument ignores the requirements in *Dhanasar*. It is not the importance of the field that determines an endeavor's national importance, but rather how the specific endeavor will impact the field on a level commensurate with national importance. *See Dhanasar*, 26 I&N Dec. at 889.

The record presented does not provide sufficient support for his arguments either.[3] The Petitioner submitted articles and reports on U.S. real estate, technology, America's labor shortage, and foreign investment. While speaking to its substantial merit, these articles and reports do not address the Petitioner's specific proposed endeavor or how it would have broad implications in the real estate fields in a way that implicates national importance.[4]

Furthermore, he has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Dhanasar*, 26 I&N Dec. at 890.

Here, however, the Petitioner has not established that his business will have a nationally important impact. Even if we assumed all the projections in the Petitioner's business plan were accurate, it lacks evidence demonstrating that the specific endeavor's impact would be nationally important. The business plan states that the proposed endeavor will "contribute to the nation's initiatives in attracting

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[3] While we may not discuss every document submitted, we have reviewed and considered each one. We note that the letter of interest from [redacted] and the article entitled "Understanding the country's housing shortage" originated after petition's filing. A petitioner must meet all the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(l), (12).

[4] The Petitioner also presented letters of recommendations from former co-workers and associates, educational certificates, employment verification letters, and various evidence documenting his work history and achievements. However, the Petitioner does not explain how this evidence is relevant to national importance as it points to the Petitioner's past accomplishments and experiences, not the specific endeavor's potential impact in real estate. Generally, this type of evidence is more appropriate in the second prong when determining if the petitioner is well-positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890.

foreign investment" and "increase the success rate of [the Petitioner's] clients' investment activities, ultimately supporting U.S. businesses in the long run." Yet the Petitioner did not provide documentation to support these generalized statements that his consulting services will result in substantial economic growth on the level of national importance. The Petitioner's business plan anticipates that the Petitioner's company will reach a total of 10 employees in year five, and employee expenses will increase from $164,500 in year one to $621,284 in year five. He also projected grossing $285,000 in sales in year one, increasing to $1,310,000 in year five. The record though lacks evidence demonstrating that the projections claimed will result in substantial economic growth on the level of national importance. It does not illustrate how creating 10 jobs and generating the claimed sales numbers, as projected in the business plan, would have substantial positive economic effects on the level of national importance. The business plan does not contain figures regarding the foreign direct investment it projects from clients. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has therefore not provided sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance. Accordingly, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that the Petitioner's proposed endeavor will sufficiently extend beyond his clients to affect the region or nation more broadly. 26 I&N Dec. at 893. He has not shown that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and 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 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.