U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31638720

Date: JUL. 10, 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 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 Form I-140, Immigrant Petition for Alien Workers (waiver petition), concluding the Petitioner had not established 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 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.

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:

- 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. ANVANCED DEGREE

The Director denied the waiver petition, determining the Petitioner had not established the three Dhanasar prongs. The Director's decision did not indicate whether the Petitioner established his eligibility for the underlying EB-2 immigrant classification. However, the Petitioner asserted below that he is an advanced degree professional as required for EB-2 classification and provided evidence in support. We will address his arguments.

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). To have education and experience equating to an advanced degree, the Petitioner must have a single degree that is a U.S. baccalaureate degree or the "foreign equivalent degree", followed by at least five years of progressive experience in the specialty. See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). A U.S. baccalaureate degree is generally found to require four years of education. Matter of Shah, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977).

The Petitioner provided certificates and transcripts evidencing he completed a two-and-a-half-year program in information technology network management, a yearlong specialized program in information security, and a two-year business management program. The Petitioner did not submit evidence of completing a four-year degree program equivalent to that of a baccalaureate. Rather, the Petitioner submitted a credential evaluation, which does not cure this deficiency in the record. The author of the evaluation claimed that the Petitioner's network management degree has a "typical duration" of at least four years of postsecondary study; however, the transcripts and certificate provided by the Petitioner evidence that he attended the program for two and a half years. In addition, the author asserted that USCIS follows a rule that equates three years of relevant work experience to one year of education. The author then relied on this rule to determine the Petitioner "attained sufficient years of specialized training and work experience to equate to the college coursework in information technology." However, the author did not cite to any authority in support of the applicability of such a rule in the EB-2 visa classification context.[2] The pertinent regulations require a bachelor's degree or foreign equivalent degree, which means individuals cannot combine experience,

[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).

[2] To the extent the author was referring to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), equating three years of specialized training for each year of college level training, this regulation pertains to the H1-B nonimmigrant visa classification. Nothing in the statute, regulations, or case law indicates or implies that the rule applies to noncitizens seeking immigrant classification under section 203(b)(2) of the Act.

training, or education to supplement a two and a half-year education program to equate to a four-year education degree.[3] The author of the evaluation then listed the Petitioner's work experience and further claimed the Petitioner has the equivalent of a U.S. master's degree in information management because he has a bachelor's degree equivalent (based on his two-and-a-half-year program and his specialized training and work experience) followed by at least five years of progressive work experience in the specialty. However, without first establishing that he obtained a single U.S. baccalaureate degree or a foreign equivalent, having work experience does not meet the regulatory requirement at 8 C.F.R. § 204.5(k)(2) to establish the Petitioner is an advanced degree professional.

The Petitioner also asserts he meets the qualifications for the underlying EB-2 classification as an individual of exceptional ability in the sciences, arts, or business. Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). An individual must provide documentation that satisfies at least three of six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) to meet the initial evidence requirements as an individual of exceptional ability. The Petitioner, however, only generally stated in the record below that he meets all six of the regulatory criteria, without explanation as to how he meets the criteria to establish he is an individual of exceptional ability.

However, because we conclude below that the Petitioner has not established the first prong of Dhanasar and is therefore ineligible for a national interest waiver, we reserve the issue of whether the Petitioner has established his eligibility for the EB-2 visa classification as an individual of exceptional ability, or whether he has demonstrated the second or third Dhanasar prongs to establish NIW eligibility. 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 alternative issues on appeal where an applicant is otherwise ineligible).

III. NATIONAL INTEREST WAIVER

The first prong of Dhanasar, 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. According to the Petitioner's statement and business plan submitted in the record below, the Petitioner's company, [redacted] will endeavor to provide end to end consulting and support for small and medium sized clients in Florida without the staff to implement higher technology solutions. The Director determined the Petitioner established that his proposed endeavor has substantial merit but did not establish that his endeavor is of national importance. We agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. "We look for broader implications" of the proposed endeavor. Id. at 890. "An 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. The Director acknowledged the

[3] The regulatory language at 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B) does not state that occupational experience is acceptable in lieu of a U.S. baccalaureate degree or a foreign equivalent degree.

Petitioner's business plan, support letters, industry reports, and articles and noted that the Petitioner's endeavor proposed to address the unique needs of every business client, provide end-to-end digital transformation services, including cloud infrastructure, unified communication and collaboration, network architecture and security, server, and storage solutions, and to create new job positions, generate taxes, and impact and help the economy. However, the Director determined the Petitioner had not established his proposed endeavor stands to sufficiently extend beyond an organization and its clients and impact the industry or field more broadly. The Director also recognized that the Petitioner's business plan indicated his company will start with 12 direct employees in the first year of operation and grow to 32 direct employees by year five, but concluded the business plan was insufficient evidence to demonstrate that his endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects regionally or nationally as contemplated by Dhanasar.

On appeal, the Petitioner asserts the Director's request for evidence (RFE) was cursory in nature and shallow in analysis of the evidence submitted. However, we note that the RFE notified the Petitioner that his initial evidence was not sufficient to meet his burden in establishing the three prongs of the Dhanasar analysis and provided him an opportunity to supplement the record.[4] In addition, the Director's decision provided adequate notice regarding the deficiencies in the petition, and the Petitioner therefore was afforded an opportunity to address the deficiencies on appeal.

The Petitioner also argues that the Director's decision did not consider the voluminous documents submitted below, incorrectly analyzed the issues, applied a clear and convincing standard of proof instead of preponderance of the evidence, and used boilerplate language in the analysis. The Director's decision is not required to address each piece of evidence submitted by the Petitioner. Moreover, the Petitioner does not identify what relevant evidence the Director failed to consider. Similarly, the Petitioner does not specify what issues were incorrectly analyzed by the Director. Further, with respect to the Petitioner's claims that the Director used boilerplate language, we conclude the Director appropriately referenced Dhanasar both as precedential legal authority and as illustrative of where prong one is satisfied. Based on our de novo review, the Director applied the correct standard of proof and we agree with the Director's determination that the Petitioner did not establish that his endeavor is of national importance. We supplement the record as follows.

In order to establish the national importance of his endeavor, the Petitioner submitted a response to the Director's RFE, supplemented by an expert opinion letter,[5] articles, reports, and a business plan, all addressing the importance of the information technology field and how the technology sector is one of the most significant contributors to the growth of the U.S. economy.[6] We recognize the value of information technology services that the Petitioner intends to provide through his endeavor; however, merely working in an important field is insufficient to establish the national importance of

[4] The regulation at 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE, but neither the Act nor the regulations compels us to do so.

[5] We note that the Petitioner's expert opinion letter was written in 2018 and describes the Petitioner's company as providing services outside the scope of the endeavor described in this petition and raises issue with whether the expert is sufficiently knowledgeable on the Petitioner's proposed endeavor to weigh in on its national importance. For example, the author discusses how the Petitioner's company would assist U.S. companies venturing into the "lucrative Latin American market," which neither the Petitioner's statement nor his business plan state.

[6] While we may not discuss every document submitted, we have reviewed and considered each one.

the proposed endeavor. See Matter of Dhanasar, 26 I&N Dec. at 889 (explaining that in determining national importance, we do not focus on the importance of the field, industry, or profession in which the individual will work but on "the specific endeavor that the foreign national proposes to undertake"). The Petitioner also highlighted the professional shortages in the informational technology industry, which he asserted his proposed endeavor will help to alleviate. However, the alleged shortage of occupations or occupational skills does not render his proposed endeavor nationally important under the Dhanasar framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In explaining the national importance of his endeavor, the Petitioner's briefs and business plan describe the services his company will provide to small and medium sized businesses, who the Petitioner noted faced disproportionate barriers to entering the marketplace. These services include assistance with: cloud computing, seamlessly moving work to a virtual environment (by providing solutions using voice and internet protocol telephone calling, instant messaging, desktop sharing, and video conferencing), network architecture and cybersecurity, and server and storage solutions, so U.S. businesses will grow and remain competitive. The Petitioner's RFE response described his company growing to employ 32 employees in five years,[7] and explained that he will hire certified professionals to guarantee quality and safety. He discussed working in the state of Florida, where there are more than 460,000 small businesses, and with the company's proposed growth, he described generating over 1.7 million in taxes. He also stated he would share his expertise of the U.S. market and train U.S. workers.

However, the Petitioner has not established through supporting documentation how his endeavor sufficiently extends beyond his prospective clients or employees, to impact the field or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner's expert letter opined on the potential benefits of his company's services but did not explain how these services have broader implications for our country. Rather, the author raises the same arguments addressed herein, such as, the importance of the information technology field, and the shortage of information technology candidates. While the Petitioner includes statistics and data on the technology field, and small businesses, he does not sufficiently explain in his business plan where his specific projections come from with respect to his company's growth. For example, the Petitioner did not present relevant supporting evidence, corroborating the assertions and figures with respect to his company's projected growth, tax revenue, or employment projections. Moreover, the Petitioner did not demonstrate how his business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan forecasts sales from one million in year one to almost six million in year five, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Similarly, even though the Petitioner's business plan claims the creation of three positions in year one and 20 positions in year five, the Petitioner did not demonstrate the relevance of these numbers and show that such future staffing levels would provide substantial economic benefits to the Florida region or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not establish that such

[7] We note that the proposed growth of the company varies throughout the Petitioner's briefs, business plan, and graphs included in these documents, with estimated growth reaching 88 employees in 5 years.

employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally.

The Petitioner also contended that his endeavor falls within a STEM (science, technology, engineering, or mathematics) profession. With respect to Dhanasar's first prong, the evidence must still demonstrate that a STEM endeavor has both substantial merit and national importance. See generally 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual (explaining, as guidance, the specific evidentiary considerations relating to STEM degrees and fields). Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. Id. On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. Id. Here, the Petitioner has not shown that his endeavor aims to advance STEM technologies and research or has broad implications rather than providing limited professional services by working within a STEM profession.

The Petitioner also provided recommendation letters from colleagues, who attested to the quality of the Petitioner's work and experience. Although the letters praise his qualifications and professional accomplishments, the Petitioner's skills, expertise, and abilities relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. Similarly, the letters of interest submitted by the Petitioner also would be considered under the second prong to determine whether the Petitioner is well positioned to advance his endeavor. The issue here, however, is whether the specific endeavor he proposes to undertake has national importance under Dhanasar's first prong, which he has not established by a preponderance of the evidence.

IV. CONCLUSION

The Petitioner has not established that he is eligible for the underlying EB-2 classification as a member of the professions possessing an advanced degree. Further, he has not met the requisite first prong of the Dhanasar analytical framework and therefore has not established that he merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

ORDER: The appeal is dismissed.