U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31507924

Date: JUL. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in steel manufacturing, 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 the Petitioner specified a proposed endeavor. 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.

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).

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,[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. ADVANCED DEGREE

The Director did not make a finding as to whether the Petitioner demonstrated qualification for EB-2 classification as either an advanced degree professional or an individual of exceptional ability. On appeal, the Petitioner asserts he qualifies for EB-2 classification as an advanced degree professional. The Petitioner submitted a Course By Course Evaluation Report (evaluation report) stating the Petitioner attained an equivalent of 23.75 credits towards graduate work based on his completion of a lato sensu course in "Production Managing." However, the Electronic Database for Global Education (EDGE),[2] an online resource that U.S. courts have found to be a reliable source of foreign education equivalencies, indicates that lato sensus are "[p]rofessional development and specialization programs" that "lead toward professional certificates, not graduate degrees."[3]

In addition, the evaluation report states that based on the Petitioner's academic transcripts from the [redacted] from January 22, 2010, the Petitioner has attained the equivalent to a bachelor's degree in manufacturing engineering. The Petitioner's diploma from [redacted] from the same date, indicates it confers the title of production engineer to the Petitioner. The evaluation report acknowledges that in Brazil, an undergraduate degree includes the bacharel, and the length of these programs can vary. EDGE specifies a bacharel can be awarded after three to five years of undergraduate study but only a four- or five-year bacharel is a level of education comparable to a bachelor's degree in the United States.[4] [redacted] records indicate the Petitioner was admitted to [redacted] on January 22, 2007, and graduated on January 22, 2010, a duration of three years. However, a [redacted] academic transcript lists credit for courses for the Petitioner for years and semesters preceding his date of enrollment, ranging from 2002 to 2006. Accordingly, the record is unclear regarding the number of years of undergraduate study earned by the Petitioner. The regulation at 8 C.F.R. § 204.5(k)(2) requires submission of a bachelor's degree or foreign equivalent degree to qualify as an advanced degree professional. A U.S. baccalaureate degree generally requires four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). Overall, the Petitioner has not met his burden of

[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] EDGE is a non-profit, voluntary association of more than 11,000 professionals in more than 40 countries. *See* AACRAO, Who We Are, https://www.aacrao.org/who-we-are. We consider EDGE to be a reliable source of information regarding foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

[3] AACRAO, Brazil, https://www.aacrao.org/edge/country/brazil.

[4] *See id.*

demonstrating he received the equivalent of a bachelor's degree after four or five years of undergraduate study at [redacted] As such, the Petitioner has not established he holds an advanced degree for EB-2 classification.

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.[5]

III. NATIONAL INTEREST WAIVER

The Petitioner proposes to establish a company, [redacted] specializing in providing high-quality steel manufacturing services in the United States, including the production of steel pipes. The Petitioner asserts the target market for his company will be the following industries: oil and gas, aerospace, automotive, military, construction, and mining and petrochemical.

The Director determined the Petitioner did not specify a proposed endeavor, which impeded the Director's ability to evaluate whether the Petitioner merits a national interest waiver. On appeal, the Petitioner asserts that he specified to the Director that his proposed endeavor in the United States is to establish [redacted], with the Petitioner acting as its chief executive officer. The record indicates the Petitioner informed the Director that [redacted] services would include "welding assemblies, welding inspection, non-destructive testing, and machining" and submitted a business plan in support of this proposed endeavor. Overall, the record supports a finding that the Petitioner did propose an endeavor for *Dhanasar* purposes.

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. *Matter of Dhanasar,* 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*. The Petitioner's proposed endeavor falls within one of these areas and he has established substantial merit.

However, the Petitioner has not met his burden of demonstrating the proposed endeavor is of national importance. On appeal, the Petitioner asserts establishing a steel manufacturing company has national implications as [redacted] would support steel-dependent sectors in the United States. The Petitioner specifies that several sectors of the economy, as listed above, rely heavily on steel as a crucial component in their operations. The Petitioner further claims his endeavor has national importance because [redacted] field, manufacturing engineering, is considered a part of science, technology, engineering, or mathematics (STEM) under the DHS STEM Designated Degree Program List. The

[5] *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 alternative issues on appeal where an applicant is otherwise ineligible).

Petitioner asserts the Biden administration is interested in protecting domestic steel manufacturing and understands the need for steel in the renewable energy sector. Even if the Petitioner's endeavor lays within a STEM field, the evidence must still demonstrate this endeavor has both substantial merit and national importance. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual. 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.* Similarly, while we do not question the importance of the steel manufacturing industry and acknowledge its importance in government objectives, in assessing national importance, we focus not on the specific field at issue bur rather on the specific endeavor the Petitioner proposes to undertake. *See Matter of Dhanasar,* 26 I&N Dec. at 889. Here, the Petitioner claims [redacted] intends to "provide its field with important advances, as [s]teel manufacturing involves continuous research and development efforts to improve production processes, enhance product quality, and develop new steel grades with specific properties." However, the record does not detail the improvement in production processes or new steel grade development intended by [redacted] does not contain relevant supporting evidence for these developments, and does not explain how they have broader implications for our country.

The Petitioner asserts that in establishing a company like [redacted] he will have a need for employees in production, administration, and commercial areas. On appeal, the Petitioner resubmits his business plan. The Petitioner states he anticipates hiring 92 full-time employees in the first five years, with payroll expenses exceeding four million dollars in the fifth year. The Petitioner also contends his proposed endeavor has the potential to generate both direct and indirect jobs. Specifically, based on data from employment multipliers, the Petitioner claims [redacted] creation of 92 full-time positions in the first five years will result in the creation of over one thousand jobs in the same timeframe. And the Petitioner states [redacted] expects to pay over five million dollars in taxes within its first five years of business, while the Petitioner intends to make an initial investment of 1.5 million dollars to the company. The Petitioner claims this investment figure will be sufficient to rent a location; buy necessary equipment, furniture, and office supplies; open job recruitments; and market the company. However, the Petitioner did not provide supporting evidence corroborating these projected employment and financial figures for [redacted] including the feasibility of financing the listed expenditures for a steel manufacturing company with his initial investment. The Petitioner also 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. Overall, the Petitioner has not demonstrated through supporting documentation how his endeavor sufficiently extends beyond his prospective clients and 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.[6]

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.

ORDER: The appeal is dismissed.

[6] *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.