U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31033964

Date: JULY 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a goldsmith, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not establish that he merits a discretionary waiver of the job offer requirement in the national interest. 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 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(3).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. 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 USCIS may, as matter of discretion,[2] 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. ANALYSIS

The Petitioner proposes to establish a jewelry manufacturing, distribution, research, and consulting business in the United States.

A. Member of Professions Holding an Advanced Degree

The Director determined that the Petitioner established eligibility for the underlying EB-2 classification as a member of the professions with an advanced degree.[3] In the decision, the Director explained that the Petitioner demonstrated that his degree in social communication with a major in advertising and propaganda from [redacted] in Brazil is the foreign equivalent of a U.S. bachelor's degree and that he has five years of progressive experience in his specialty. Upon de novo review, we disagree with the Director that the Petitioner has established eligibility for the underlying EB-2 classification.

Although the Petitioner demonstrated having the foreign equivalent of a U.S. bachelor's degree followed by five years of progressive experience in his specialty, he has not demonstrated he qualifies as a member of the professions. The regulation at 8 C.F.R. § 204.5(k)(l) states that an EB-2 visa petition may be filed on behalf of a noncitizen "who is a member of the professions holding an advanced degree." The regulation at 8 C.F.R. § 204.5(k)(2) defines a profession as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation."

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

[3] The Petitioner does not claim eligibility for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business. See section 203(b)(2) of the Act.

In the petition, specifically Part 6, questions 2 and 3, the Petitioner indicated he intends to have the job title of goldsmith, with the proposed standard occupation classification (SOC) code[4] 51-9071, and the nontechnical job description, "[d]esign, create, fabricate, adjust, repair, or appraise jewelry, gold, silver, other precious metals or gems." His statements explain his intention to establish a jewelry manufacturing and distribution business for which he would open a jewelry factory in the United States to provide high-quality jewelry to south Florida companies and eliminate importing jewelry and outsourcing to foreign countries. In addition to jewelry manufacturing and distribution, he intends to establish a research and development center to train and consult with others in the jewelry field about his business' manufacturing technologies, as well as to assist U.S. law enforcement agencies to identify counterfeit jewelry products.

Without further evidence, the Petitioner has not demonstrated that his intended occupation of working as a goldsmith for his jewelry business requires the minimum of a U.S. bachelor's degree or its foreign equivalent, or that otherwise he is a member of the professions. According to the U.S. Department of Labor, the education requirement for "Jewelers and Precious Stone and Metal Workers" under SOC code 51-9071.00 occupations states, "[m]ost occupations . . . require training in vocational schools, related on-the-job experience, or an associate's degree." See U.S. Department of Labor, O*NET Summary Report for "Jewelers and Precious Stone and Metal Workers," https://www.onetonline.org/link/summary/51-9071.00. Because the Petitioner has not established that he is a member of the professions under 8 C.F.R. 204.5(k)(2), he is not eligible to be classified as a member of the professions with an advanced degree. 8 C.F.R. § 204.5(k)(l). We withdraw the Director's determination otherwise.

B. National Interest Waiver

Although the Petitioner has not established his eligibility for the underlying EB-2 visa classification and is therefore not eligible for a national interest waiver, we will address the basis for the Director's decision, that the Petitioner did not establish his eligibility under the Dhanasar analytical framework.

The Director determined that although the Petitioner established that his proposed endeavor has substantial merit, he did not show it is of national importance under *Dhanasar's* first prong. The Director further determined that while the Petitioner established he is well-positioned to advance the proposed endeavor under *Dhanasar's* second prong, he did not demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification under *Dhanasar's* third prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[5]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the

[4] An SOC code is a statistical standard that federal agencies use to classify workers into job-related categories. See U.S. Bureau of Labor Statistics, "Standard Occupational Classification," https://www.bls.gov/soc/.
[5] While we may not discuss every document submitted, we have reviewed and considered each one.

specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889.

As discussed above, the Petitioner intends to work as a goldsmith by opening a jewelry factory for manufacturing and distribution; establishing a jewelry research and training center to conduct research and trainings on jewelry manufacturing technologies; and assisting U.S. law enforcement agencies to identify counterfeit jewelry. Upon de novo review, we agree with the Director that the Petitioner's proposed endeavor has substantial merit.

The issue on appeal is whether the Petitioner established his proposed endeavor is of national importance. The Director found that the Petitioner did not show how his proposed entrepreneurial activities stand to extend beyond his business and clients to have an impact on the field more broadly, or has significant potential to employ U.S. workers, or will have substantial positive economic effects, rising to the level of national importance. The Petitioner argues on appeal that the evidence submitted meets the requirements under the Dhanasar framework by a preponderance of the evidence. He points to an opinion letter, industry reports and articles, and the Petitioner's statements arguing this independent, objective evidence is sufficient to show his endeavor's national importance.

We agree with the Petitioner that the standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. However, to determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review, the Petitioner has not demonstrated that the evidence submitted establishes his eligibility by a preponderance of evidence, as discussed below.

The Petitioner's statements provide an overview of his proposed jewelry business. He explains that his business would manufacture and distribute jewelry products from within the United States using microfusion techniques and automated 3D prototyping processes. Using his patented computer-aided designs (CAD) and computer-aided manufacturing (CAM) technology not normally used in the industry, he maintains his business would reduce labor costs, raw material waste, and material defects while increasing manufacturing efficiencies and production times. He argues his manufacturing technologies and techniques would eliminate the need for U.S. clients to import high quality jewelry products thereby having a "very substantial impact on the U.S. jewelry industry" which would thereby have an impact on the Florida and U.S. economies.

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. Matter of Dhanasar, 26 I&N Dec. at 889. Here, the record does not sufficiently document the potential prospective impact, including the asserted improvements to the jewelry manufacturing and distribution field or the economic benefits to Florida and the United States. In Dhanasar, we 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, such as those resulting from certain improved manufacturing processes or medical advances." 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.

The Petitioner explains that he developed jewelry manufacturing technologies and "innovative techniques in crafting jewelry pieces, including the manner and method of creating molds for engagement rings, and the literal cutting edge technology involved in cutting and shaping gems for fitting into jewelry." For his jewelry manufacturing innovations, he claims to have acquired three patents, "two in metal alloys" and another "in automating jewelry crafting." He further maintains his "patent for a revolutionary non-ferrous silver alloy in jewelry tops the market in terms of durability and malleability, based on his extensive knowledge of the exacting science of metallurgy."

While Dhanasar indicates that an endeavor may have national importance based on "certain improved manufacturing processes," here the Petitioner has not provided independent, corroborating evidence of his claims of having "innovative technologies" or that such technologies have the potential to improve jewelry manufacturing. To demonstrate his patented inventions, the Petitioner submitted two invention patent applications, one dated in December 2020 for a non-ferrous gold alloy for jewelry and another dated in September 2020 for a non-ferrous silver alloy for jewelry. However, the Petitioner did not submit evidence showing the approval of either patent application or details or approval for his third claimed patent in automating jewelry crafting. Without further evidence of his claimed "innovations" and patented inventions, the Petitioner has not demonstrated his claims that his endeavor has the potential to improve jewelry manufacturing or benefit the U.S. economy based on his innovations and patented inventions.

On appeal and in his statement on record, the Petitioner relies on his professional knowledge and experience in the jewelry industry, including his work with his businesses in Brazil and his quality jewelry craftsmanship. He claims his industry knowledge and experience demonstrate that he "continues to achieve advances never thought before in jewelry manufacturing," and that he would "reshape the jewelry industry in the United States" and advance the industry by "reducing reliance on foreign imports, building up jewelry part production capacity, creating efficient and powerful logistics networks that generate wealth" for U.S. businesses. To support his statements, the record includes letters from the Petitioner's professional colleagues, including other jewelry manufacturers and retailers, who attest to the Petitioner's professional knowledge and experience.

However, the Petitioner's reliance on his professional knowledge and experience relates to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Petitioner's proposed endeavor. The recommendation letters mainly attest to his technical competencies and professional knowledge, including his understanding of microfusion and 3D prototyping; the quality of his jewelry craftsmanship; his knowledge to identify jewelry material impurities; and his providing clients with high quality jewelry designs and products. We acknowledge that the evidence shows he has provided valuable jewelry manufacturing and distribution services for his clients, but the Petitioner has not offered sufficient information and evidence based on his statements and these recommendation letters to demonstrate his "innovative technologies" or the prospective impact of his proposed endeavor rises to the level of national importance.

The Petitioner's appeal also argues the national importance of his endeavor is demonstrated in an advisory evaluation from a professor with the Department of Engineering at [redacted]

[redacted] in Ohio. The evaluation mainly focuses on the expected growth of the jewelry industry and the use of 3D prototyping for jewelry manufacturing to reduce costs. The evaluation states that the Petitioner's use of CAM software would help with mass production of jewelry in the United States and reduce costs and errors in jewelry manufacturing. Also, manufacturing in the United States would reduce the need for imported products.

However, instead of focusing on the Petitioner's specific endeavor having a prospective impact in the fields of jewelry manufacturing and distribution, the evaluation focuses on the growth of the jewelry industry and the use of CAD and CAM software to mass produce jewelry in the United States. The evaluation mainly restates many of the Petitioner's statements about how using CAD and CAM software would increase efficiencies while reducing imported jewelry and jewelry defects. The evaluation does not provide details of the Petitioner's proposed endeavor or its potential impact in the field or to the U.S. economy. While the evaluation also discusses utilizing a patented silver alloy to "remove the potential for adverse reaction to oxygen and sulfurous gases and will manufacture jewelry free of color variations," the evaluation does not indicate having reviewed the Petitioner's approved patent. Instead, the evaluation restates the Petitioner's general statements that using the patented silver alloy for jewelry manufacturing would have significant potential for positive economic impact by helping to reduce time and materials used in jewelry manufacturing and decreasing errors and variations in mass jewelry manufacturing.

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. Id. at 889. The evaluation lacks specific details or discussion about the proposed endeavor; instead, it provides general statements that the Petitioner's business would have a potential prospective impact to the U.S. economy. Such general statements are not sufficient to demonstrate the national importance of the Petitioner's proposed endeavor. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

To further support the national importance of his endeavor, the Petitioner submitted industry articles relating to the following: jewelry market industry trends; industry analyses of jewelry manufacturing in the United States; the jewelry and watch market; how the increase in gold prices affects the jewelry industry; the effects of laboratory diamonds on jewelry; silver alloys for investment casting; computer simulation of jewelry investment casting; computer simulation and jewelry production; casting techniques; importance of small business on U.S. and local economies; economic effects of unemployment and employment; a 2011 analysis of small business innovation in green technologies; and the importance of entrepreneurs on the U.S. economy.

We recognize the importance of the jewelry manufacturing and distribution industry and related careers to the U.S. economy, and the significant contributions from immigrants who become successful entrepreneurs in the United States. However, merely working in the jewelry manufacturing and distribution field or starting a jewelry business is insufficient to establish the national importance of the proposed endeavor. The articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

In addition to jewelry manufacturing and distribution, the Petitioner states he also intends to establish and lead a research and training center where he would conduct scientific research to reduce manufacturing costs and defects while improving efficiencies and quality of jewelry products. For his research, he explains that he will continue to develop "industry-changing advances in automated jewelry manufacturing." Instead of injecting wax into a mold and using usual manufacturing techniques, he would use and develop his "techniques associated with rapid 3D prototyping" using CAD and CAM software to create a cast or mold for mass production. He maintains that such techniques would make the market more viable by lowering costs and defects, while improving jewelry manufacturing efficiencies and quality. While the Petitioner expresses his intent to conduct research, he does not provide details or a description of his research, other than he would like to research "innovative technologies" related to jewelry manufacturing and the use of CAD and CAM software. While the Petitioner discusses his desire to conduct scientific research in order to improve the efficiencies and products in the jewelry manufacturing industry, he has not provided a detailed description, or independent, probative evidence of his intended scientific research or innovations. General statements about researching "innovative technologies and techniques" are not sufficient for us to determine whether his endeavor rises to the level of national importance.

In addition to researching jewelry manufacturing technologies, he also proposes to disseminate his professional knowledge and techniques to others in the industry, which he claims would have "broad positive economic impacts" for U.S. businesses and the jewelry industry. By teaching his technical knowledge to other U.S. craftsmen and industry members, he maintains it would benefit the national and global jewelry industry and economies. One colleague's recommendation letter explains selling RhinoGold software, a CAD software used to make customized jewelry designs, to the Petitioner and mentions an intent to work with the Petitioner in the future to develop lectures on 3D technologies for jewelry production for which the Petitioner would conduct the lectures at fairs, associations, universities, and manufacturers. 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. Matter of Dhanasar, 26 I&N Dec. at 893. Similarly, the Petitioner's teaching to others in his field does not rise to the level of having national importance. The evidence does not suggest that the Petitioner's work as an instructor for his training and consulting center would impact the jewelry industry more broadly.

Lastly, the Petitioner proposes to work with U.S. local and national law enforcement as a forensic expert in jewelry to aid in the detection of counterfeit jewelry. In support of this endeavor, the Petitioner submitted a letter from a government attorney with a police department in Brazil who attests to the Petitioner working to help with criminal investigations by successfully identifying the origin of metals and materials, including stolen gold and counterfeit jewelry. The government attorney also expresses his intention to work with the Petitioner to develop scientific articles about implementing a way to authenticate jewelry, such as by identifying electromagnetic signals using certain devices. However, beyond these general statements, the record does not include further information or evidence detailing this future scientific research on jewelry authentication. The record does include articles relating to the U.S. government seizing counterfeit goods and the effects of counterfeit good on the U.S. and global economies. However, the articles do not corroborate the Petitioner's claims that his proposed activities of working with U.S. law enforcement stand to provide substantial economic benefits to Florida or the United States. Without further evidence, we are unable to evaluate the

Petitioner's claims to determine whether the proposed endeavor rises to the level of national importance.

The Petitioner's claims that his jewelry business endeavor has the potential to benefit his field, or the Florida or U.S. economy, have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Moreover, without sufficient documentary evidence that his proposed job duties as the owner and a goldsmith for his business would impact the jewelry industry more broadly, rather than benefiting his business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance. Beyond general assertions, the Petitioner has not demonstrated that the work he proposes to undertake offers the claimed innovations that contribute to advancements in his industry or otherwise has broader implications for his field. Moreover, the economic benefits that the Petitioner claim depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed work for his jewelry business and the claimed economic benefits to Florida or the United States.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. This identified basis for denial is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting 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

The Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Also, the Petitioner has not met the requisite first prong of the Dhanasar analytical framework. Therefore, the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.