U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31200791

Date: JUN. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a trucking company owner, 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 he claims is equivalent to a U.S. bachelor's degree, along with five years of progressive experience. 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 the qualifying degrees, 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). Moreover, any document in a foreign language must be accompanied a certification from the translator that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

The Petitioner claims that he has a specialist diploma in applied electrical engineering. To demonstrate this the Petitioner submitted a copy of his original diploma and the accompanying supplement. He also provided translations for the documents. However, he did not provide any certificates of translation. Because the Petitioner did not submit a properly certified English language translation of the educational documents as required, we accord them no weight as we cannot determine whether they support the claim.

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.

Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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.

The appeal brief states that the Petitioner's business, [redacted] will specialize "in the safe and secure transportation of expensive and rare cars, vehicle prototypes, oversized and heavy vehicles, and specialized equipment." The evidence provided does not demonstrate that this specific endeavor is of national importance.

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.

The Petitioner argues on appeal that his proposed work is nationally important because it "is poised to revolutionize the vehicle and equipment transportation industry within the United States." Yet the brief and the record does not explain how the business would impact the overall field more broadly beyond its clients on the level of national importance. The brief describes the focus of the business will be the transportation of rare and antique cars, specialized equipment, and developmental vehicles. It further touts its commitment to "staying at the forefront of industry trends and innovations," and contends that the company will engage in environmentally responsible practices and will align with the federal regulations on interstate trucking. It avers that because vehicle transportation, the environment, and federal regulations are all nationally important, the Petitioner's business is nationally important. However, these arguments ignore the requirements we set forth 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 brief neglects to explain how the business's transportation of vehicles will affect the overall trucking field at a nationally important level.

The record does not sufficiently demonstrate national importance either.[2] The Petitioner provided letters of support from some of his current business partners. Although they all applaud the Petitioner's contributions to their business and claim generally that assisting their respective

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

businesses helps the economy, they do not specify how the Petitioner's business will contribute to the trucking industry or the economy on a nationally important level. Beyond these letters, the record primarily contains documentation regarding the Petitioner's work history in the trucking industry, such as training certificates, articles of incorporation for the company, letters of recommendation from past business partners, tax documents, truck purchase and registration documents, business contracts, and a magazine interview describing his work for a company in Russia. 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 the trucking industry.

The Petitioner also provided a letter from Dr. [redacted] a professor in supply chain management at [redacted] 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). Nonetheless, 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.*

Here the advisory opinion is of little probative value as Dr. [redacted] evaluation repeatedly makes conclusory statements on national importance without sufficient basis. First, he generally discusses the importance of the industry and the need for skilled works. Then Dr. [redacted] argues that because the Petitioner's company will deliver goods faster and improve the trucking industry, American businesses will benefit. Nevertheless, he misses a key needed element in this analysis, as he never explains how the Petitioner will be faster or better the industry. Nor does he demonstrate how the improvements will have a national impact on the field. Next, he summarily concludes that the endeavor will have substantial positive economic effects because the transport industry overall generates significant revenue. He then resolves that the company is the subject of national initiatives because there are regulations on interstate trucking. Finally, he determines that the proposed endeavor will benefit individual and societal welfare because the company will transport goods efficiently, which makes society better. These sections make presumptive conclusions without analysis and evidence to support them. In this lengthy discussion, Dr. [redacted] never explains how the Petitioner's proposed endeavor impacts the vehicle transportation field beyond the company's clients or how his endeavor would have an economic impact on par with national importance. From the evidence provided, the Petitioner has not established that his proposed endeavor will have a national impact on the trucking industry.

The Petitioner additionally avers that his business will have "manifold" economic benefits, with significant potential to employ U.S. workers or otherwise offer 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, though, the business plan does not adequately support these projections of job and revenue creation.

The Petitioner's second business plan anticipates that the Petitioner's company will reach a total of 50 employees in year five, with payroll expenses growing from $447,500 in year one to $2,973,159 in year five. He also projected generating $29,585 in net profit in year one, increasing to $137,624 in

year five. Nonetheless, the plan does not explain how these forecasts were calculated, or adequately clarify how these projections will be realized, nor does the record contain evidence to support the business plan's financial projections. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, the lack of supporting details detracts from the credibility and probative value of the business plan.

Even if we assumed all the projections in the second business plan were accurate, the record lacks evidence demonstrating that its impact would be nationally important. The Petitioner's statement in support of the petition contends that his business will have "significant potential to employ U.S. workers and [will have] other powerful positive economic impacts." Yet the Petitioner did not provide documentation to support these statements that the company will result in substantial economic growth on the level of national importance. The record does not illustrate how creating 50 jobs and generating profits as projected in the business plan, would have substantial positive economic effects on the level of national importance. The Petitioner must support 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.