U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31284601

Date: JUNE 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 Petitioner did not establish that he qualifies for the underlying EB-2 classification or that 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. 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, 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. In addition to the definition of "advanced degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." [1]

If a petitioner demonstrates EB-2 eligibility, 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*

[1] The letters from current or former employer(s) shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. 8 C.F.R. § 204.5(g)(1).

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, 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.

II. ANALYSIS

A. Advanced Degree Professional

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability.[2] For the reasons discussed below, we concur with the Director that the Petitioner has not demonstrated that he is an advanced degree professional.

The Petitioner filed the petition in November 2022. The Petitioner asserted that he qualified for advanced degree professional classification by virtue of foreign education that he claimed is equivalent to a U.S. Bachelor of Science in information systems and more than five years of progressive experience, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). In January 2023, the Director issued a request for evidence. The Director determined that the Petitioner's foreign degree represented attainment of a level of education comparable to a bachelor's degree in the United States. However, the Director noted that the Petitioner had not submitted employment letters showing that he had at least five years of progressive post-baccalaureate experience in the specialty. The Director instructed the Petitioner to submit letter(s) from current or former employer(s) showing that he had at least five years of progressive post-baccalaureate experience in the specialty.[3] In response to the Director's request, the Petitioner stated in part that he was submitting employment verification letters that detailed that he had over five years of progressive post-baccalaureate experience in the specialty.

The Director denied the petition in part, finding that although the Petitioner had established that he had the equivalent of a U.S. baccalaureate degree, he had not established five years of progressive post-baccalaureate experience in the specialty. On appeal, the Petitioner contends that the Director erred because they did not consider the submitted employment verification letters prior to denying the petition.

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 [or] a United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." 8 C.F.R. § 204.5(k)(2). In addition, a petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(l), (12).

[2] As the Petitioner does not claim to be an individual of exceptional ability, we will not address it further.
[3] The Director also requested additional documentation in support of the Petitioner's claim that he qualifies for a national interest waiver.

The record includes a *titulo de bacharel* issued to the Petitioner in November 2012 by the [redacted] The record also includes a transcript issued by [redacted] demonstrating that the Petitioner completed three years of coursework, from January 2008 through February 2011. The Petitioner also submitted an evaluation of his academic credentials from GEO Credential Services, dated November 21, 2022. The evaluation concluded that the Petitioner's foreign degree was equivalent to a Bachelor of Science in information systems.

According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE)[4], the *3-year Titulo de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to 3 years of university study in the United States. The *4-* or *5-year Titulo de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to a bachelor's degree in the United States. The evaluation of the Petitioner's academic credentials from GEO Credential Services does not explain how the evaluator found the Petitioner's three years of study to equate to the four years of study required for a U.S. bachelor's degree. Based upon the information in EDGE and the length of the program as reflected in the transcript, we question the evaluation's accuracy.[5] Therefore, we will withdraw the Director's finding that the Petitioner has established that he holds the equivalent of a baccalaureate degree from an accredited college or university in the United States.

Even if the Petitioner had established that his foreign degree was the equivalent of a baccalaureate degree from an accredited college or university in the United States, we find that the letters submitted in response to the Director's request for evidence do not demonstrate that the Petitioner obtained five years of "progressive" experience in the specialty as "demonstrated by advancing levels of responsibility and knowledge."

The Petitioner has not demonstrated eligibility for the advance degree professional immigrant classification based on the current record.

B. National Interest Waiver

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign

[4] We consider EDGE to be a reliable source of information about 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). For more information, visit https://www.aacrao.org/edge.

[5] We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation.

national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

The Petitioner stated that his proposed endeavor was to utilize his knowledge "as an Information Systems expert to establish his own [IT consulting] business in the United States" which will "focus on providing consulting, development and professional training services to small and medium-sized companies, as well as NGOs and governmental entities." The Petitioner further detailed that his work would include the design, development, maintenance and implementation of systems and computer networks, cybersecurity consultancy and disaster recovery plans. The Director determined that the record did not demonstrate the Petitioner's proposed endeavor had national importance, as the record lacked details as to what the Petitioner intended to do as an information systems consultant. The Director concluded that the Petitioner had not established that his proposed endeavor had substantial merit and national importance.

On appeal, the Petitioner submits a brief which generally reiterates the benefits of his profession, his qualifications, information in submitted articles about the field of technology, and the claimed economic impacts of his proposed consulting company and contends that he has established the national importance of his proposed endeavor.

We adopt and affirm the Director's decision as it relates to the first prong of the *Dhanasar* framework as the record does not sufficiently establish the Petitioner's specific endeavor to demonstrate the national importance of his proposed endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Petitioner's general objections on appeal regarding his eligibility for the EB-2 classification, without identifying any specific errors on the part of the Director, are insufficient to overcome the well-founded and logical conclusions the Director reached based on the evidence submitted by the Petitioner. The Petitioner has not articulated on appeal how the Director failed to give proper weight to the evidence.

While we acknowledge the Petitioner's assertion that his proposed endeavor will "benefit [redacted] economy" and produce substantial positive economic effect in the region and to the U.S. government through the amount of taxes paid, he has not demonstrated that the endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. *See Dhanasar* at 890. Absent probative evidence to show the realistic potential of the Petitioner's company to operate at all, it is not evident that the company will generate revenue to create jobs, to expand, or to otherwise notably impact the economy in a location in which it intends to operate. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's pursuits as a consultant for businesses would reach the

level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Id*. The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver.

Because the identified reasons for dismissal, as detailed above, 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 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 a noncitizen is otherwise ineligible). The petition will remain denied.

ORDER: The appeal is dismissed.