U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31032121

Date: JUN. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial analyst, 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's eligibility for the EB-2 classification as a member of the professions holding an advanced degree. In addition, the Director determined that the Petitioner had not established that he merited a national interest waiver as a matter of discretion. 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 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 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. 8 C.F.R. § 204.5(k)(2).

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.

II. ELIGIBILITY FOR THE EB2 CLASSIFICATION

The Petitioner bases his claim to eligibility for the EB-2 classification as a member of the professions holding an advanced degree, and does not claim to qualify as an individual of exceptional ability. In her decision, the Director concluded that while the Petitioner demonstrated that he possesses the foreign equivalent of a bachelor's degree in business administration from a college or university in the United States, the evidence did not show that he also had the requisite five years of progressive, post-degree experience in his specialty. Specifically, the Director listed the several reference letters submitted by the Petitioner, but determined that none provided the dates of his employment and a detailed account of the duties he performed for his previous employers. She also noted that a document titled "employment book," signed by an official of B-S- SA, did not sufficiently describe his duties in the positions listed.

On appeal, the Petitioner points out that the "employment book" from B-S- SA provides a list of the Petitioner's job titles with this employer from 2007 to 2018, and that another document from an official of that company includes a list of four to six responsibilities for each of those positions. These documents, in addition to the initially submitted letter from B-S- SA which confirmed the specific beginning and end dates of his employment, are sufficient to show that the Petitioner possesses at least five years of progressive, post-baccalaureate experience in his specialty. We therefore withdraw the Director's determination on this issue, and conclude that the Petitioner has established by a preponderance of the evidence that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree.

III. NATIONAL INTEREST WAIVER

To establish that they merit a national interest waiver, a petitioner must first describe the specific endeavor they propose to undertake in the United States. Here, the Petitioner initially stated that his proposed endeavor is to provide financial services to companies and individuals, which included advising in the areas of accounting, investing, insurance coverage, and securities. His proposed services also included producing financial reports, directing investment activities, and developing financial strategies, as well working with clients from Brazil "to facilitate cross-border transactions." The Petitioner further provided letters from companies to whom he had submitted job applications, including one from his previous employer in the United States, but did not elaborate with specific details regarding how he would proceed with his proposed endeavor.

[1] *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).

In responding to the Director's request for evidence (RFE), the Petitioner stated that his proposed endeavor was to "develop and innovate financial models" and "identify and improve new professional talents working in the financial sector." He indicated that the former would involve the analysis of financial data, reviewing information about prospective deals, and evaluating and analyzing a variety of financial areas such as expenditures, investment opportunities, and financial statements. As for the latter portion of his proposed endeavor, he stated his intention to contribute to the professional development of small and medium-sized business owners by providing guidance on financial data and credit issues.[2]

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.

In her decision, the Director concluded that the Petitioner established that his proposed endeavor has substantial merit, but went on to determine that the evidence did not show that it was of national importance. More specifically, she concluded that the materials submitted, including industry and government reports concerning the occupation of financial analyst and trends within that field, did not demonstrate that the Petitioner's specific proposed endeavor would have broader implications within the field, significant potential to employ U.S. workers, or substantial positive economic effects.

On appeal, the Petitioner initially asserts that the Director did not consider the evidence submitted in response to the RFE, citing the similarity in the language of that correspondence to the Director's decision. While he states that this includes nine pieces of evidence, he does not specifically identify any piece of evidence or how that evidence supports the national importance of his proposed endeavor. The Petitioner also cites to *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) in support of this assertion. The court in *Buletini*, however, did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); see also *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

Here, the evidence referred to is accurately if summarily described by the Director in her decision, and as she noted provides only general information regarding financial analysts and the industry in which

[2] The brief submitted on appeal describes the Petitioner's proposed endeavor as creating and directing a company offering digital marketing services. As this appears to be an error in drafting by the Petitioner's representative, we will focus our analysis on the proposed endeavor as described above.

they work. For example, the Petitioner submitted a chapter on financial analysts from the *Occupational Outlook Handbook*, which is published by the U.S. Bureau of Labor and Statistics and is available on the agency's website. While this evidence describes the usual duties, training and education requirements for entry, and the job outlook for this occupation, these descriptions do not focus on the Petitioner's specific endeavor, which is to provide financial services to the clients of his employer. Similarly, an article from the website www.intuit.com discusses the financial illiteracy of small business owners, but primarily markets a software tool and does not address the Petitioner's proposed endeavor . In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual proposes to engage; instead we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. We therefore agree with the Director's conclusion that the government and industry reports and articles submitted with the Petitioner's initial submission and his response to the Director's RFE do not establish the national importance of his proposed endeavor.

In addition, the Petitioner refers to the assertions he made in his initial statement of his proposed endeavor regarding the potential impacts of his endeavor, which included facilitating cross-border transactions between the U.S. and Brazil, creating new jobs, and increasing the financial profits of individuals and companies in the U.S. He asserts on appeal that the printout from the website of the United States Small Business Administration (SBA), which very briefly describes the agency's mission, mentions the same type of services that he proposes to provide, apparently referring to the agency's provision of "counseling, capital, and contracting expertise." But he does not articulate how this evidence shows that his specific endeavor as a financial advisor, developing financial models and providing financial guidance to small business owners, would have the required broader implications for the financial services industry or the U.S. economy. Although he later asserts that this and other reports and articles in the record, including a mentorship program for small businesses sponsored by the SBA, "illustrate the impact of the endeavor on a matter considered nationally important," this evidence does not include any information regarding the nature of the Petitioner's specific proposed endeavor or its impact. An endeavor "that has significant potential to employ U.S. workers or has other substantial positive economic effects" may have national importance, but the Petitioner has not submitted evidence describing the significance of his specific endeavor's potential for job creation or to have positive economic effects. *Id.* at 890.

The Petitioner also submitted an expert opinion letter from a professor of business at a U.S. university who offers his thoughts on the Petitioner's eligibility for a national interest waiver. In discussing the national importance of the Petitioner's proposed endeavor, the professor focuses entirely on economic conditions in Brazil and its trade relationship with the U.S., concluding that the Petitioner's "expertise in this area is of substantial merit and national importance for U.S. companies doing business or planning to do business in Brazil." We first note that the issue of the Petitioner's expertise is a relevant factor to be considered in the second prong of the *Dhanasar* analytical framework, but is not considered when evaluating the national importance of his proposed endeavor in the first prong. In addition, the Petitioner did not provide sufficient detail in his initial filing regarding his proposal to "facilitate cross-border transactions," and did not mention this aspect of his endeavor at all when responding to the Director's RFE. Accordingly this evidence is of minimal evidentiary value in determining the national importance of his proposed endeavor.

We finally note that the Petitioner concedes that the recommendation letters written by his former employers and colleagues do not address the national importance of his proposed endeavor, but instead were submitted in support of his positioning to advance his proposed endeavor.

Per the above discussion, the Petitioner has not established that his proposal to provide financial services to individuals and small businesses is of national importance, and he therefore does not meet the first prong of the *Dhanasar* analytical framework. A petitioner must meet all three prongs of the framework in order to establish their eligibility for a national interest waiver. As the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the second and third prongs of the 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 an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.