U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30556530

Date: MAY 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an automation technician, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 was eligible for the requested classification or that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that he is eligible for the requested classification or that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Because this 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 remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

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. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at

least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once eligibility for the underlying EB-2 classification is established, a petitioner 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,[3] 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. EXCEPTIONAL ABILITY

The first issue to be addressed is whether the Petitioner established his eligibility for EB-2 classification. The Petitioner claims eligibility as an individual of exceptional ability.[4] The Director determined that the record suggested that the Petitioner met at least three of the six criteria within the exceptional ability determination. However, the Director concluded that, while the Petitioner has an academic record from an institution of learning in electromechanics, at least ten years of full-time experience as an automation/electromechancial technician, a license as an industrial technician, and a salary demonstrating exceptional ability, the evidence did not support a finding that the Petitioner has expertise significantly above that which is ordinarily encountered in the profession. Therefore, in a final merits analysis, the Director determined that the evidence did not establish the Petitioner's eligibility as an individual of exceptional ability.

On appeal, the Petitioner disagrees with the Director's decision and, relying on evidence already in the record, addresses each of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) that he asserts establish his eligibility. He states that the Director "erred in failing to recognize the substantial contributions and recognition, which unquestionably demonstrate his importance and influence in the field of business, technology, and industrial automation."

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[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] *See also 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 to be discretionary in nature).

[4] The Petitioner does not assert that he is a member of the professions holding an advanced degree.

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act. Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows the petitioner possesses exceptional ability. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376.

After reviewing the Petitioner's initial evidence, the Director issued a request for evidence (RFE) informing the Petitioner that the evidence did not establish that he met each of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). In the RFE, the Director explained the deficiencies in the evidence and provided suggestions of additional evidence that the Petitioner may submit. The Director specifically noted that the Petitioner's evidence of membership in the Institute of Electrical and Electronics Engineers (IEEE) and the Sociedade Brasileira de Automatica (SBA) was insufficient to demonstrate that he meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) (membership in professional associations) because it did not establish the membership requirements for each organization. The Director also specifically noted that the Petitioner's letters of recommendation submitted to demonstrate that he meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(F) (recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations) were insufficient because the letters did not demonstrate how the Petitioner's contributions were significant to the industry.

In response to the RFE, the Petitioner did not submit additional evidence in support of the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) to identify the membership requirements for either the IEEE or the SBA. In support of the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(F), the Petitioner submitted a professional reference letter from [redacted] automation manager with [redacted] attesting to the Petitioner's professional knowledge and technical capabilities. Mr. [redacted] states that he "would like to highlight the Z1 project, where we started from scratch and all stages from installation to commissioning of technologies were approved by the [redacted] engineering team in record time." In his RFE response, the Petitioner also referenced an article published on the Brazilian website Terra.com in [redacted] 2022. The article, titled [redacted] discusses growth in the field of automation and robotics and includes quotes from an interview with the Petitioner.

On appeal, the Petitioner asserts that the Director erred in concluding that the evidence did not demonstrate that he met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) based on his membership in professional associations. The Petitioner describes the IEEE and SBA as organizations that "meet the criteria for professionalism as outlined in the regulations." However, the Petitioner does not provide

evidence of the membership requirements for either organization, despite the Director's request in the RFE. In describing the membership qualifications for professionals, the IEEE website states, "Professional membership is open to individuals who by experience give evidence of competence in an IEEE designated field."[5] However, the website does not provide a description of what evidence of competence may be submitted and how it will be evaluated. In describing the membership qualifications for professional partners, the SBA website indicates that a name and address must be provided, but no other evidence is listed and the website does indicate that applications for membership will be reviewed or evaluated.[6] Without detailed information about the membership requirements for either the IEEE or the SBA, we are precluded from determining that these associations are professional and support that the Petitioner meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner also asserts that the Director erred in concluding that the evidence did not demonstrate that he met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(F) based on the reference letter from Mr. [redacted] and the article published on Terra.com. The Petitioner points to Mr. [redacted] mention of the Petitioner's "instrumental role in the successful completion of the projects, such as the Z1 project." However, neither the letter from Mr. [redacted] nor other evidence in the record explains the "Z1 project" in detail or discusses the Petitioner's roles and responsibilities. The Petitioner states that the article in Terra.com, "a renowned Brazilian website with a vast readership, adds substantial weight to [the Petitioner's] achievements. However, the article does not discuss the Petitioner's achievements in any detail. Nor does the Petitioner provide independent, objective evidence of the website's readership or reputation.

The Petitioner states that the Director "misinterprets" the criteria set forth at 8 C.F.R. § 204.5(k)(3)(ii) in conducting a final merits analysis of his exceptional ability. However, he does not identify which criteria has been misinterpreted and in what way. Referencing letters of support submitted with the initial filing, the Petitioner states that "he has held complex and critical roles in various companies, including work on automation projects for esteemed companies like [redacted] His contributions to these projects are a testament to his extraordinary skills and expertise in the field." While the evidence in the record demonstrates that the Petitioner's role was "important" and his performance was "excellent," the evidence does not identify or describe how the Petitioner's professional accomplishments demonstrate that he has a degree of expertise significantly above that ordinarily encountered.

The Director fully analyzed and discussed the evidence in the record, considering the totality of the evidence in conducting a final merits determination of the Petitioner's eligibility. In our de novo review of the Petitioner's eligibility for the underlying classification, we agree with the Director and conclude that the Petitioner has not established that he is an individual of exceptional ability.

III. NATIONAL INTEREST WAIVER

The Petitioner states that he is a professionally trained technician in electromechanics with experience in "the three most important pillars of industrial automation: electrical, robotics and PLC (programmable logic controller)." He describes several projects in the automotive industry on which

[5] IEEE.org, https://www.ieee.org/membership/join/index.html?utm_source=button_text&utm_medium=lp-membership&utm_campaign=join#qualifications (last visited May 8, 2024).
[6] Sociedade Brasileira de Automatica, https://www.sba.org.br/web/socios/cadastro?categoria=2 (last visited May 8, 2024).

he worked for major car companies, including automating paint and body shops, assembling electric vehicles, and battery installation. His proposed endeavor is to continue working in industrial automation "for the development and implementation of new automation processes, especially using robotics technology, and maintenance management, as well as for the improvement of existing processes to ensure availability, continuity of production and increased productivity." The Petitioner states that his proposed endeavor "has significant potential to employ U.S. workers and has other substantial positive economic effects," will "boost productivity for small businesses," will alleviate a talent shortage of electronic engineering technologists, and will offer benefits "such as increased efficiency and reliability to help reduce human errors."

With the initial filing the Petitioner submitted evidence of his education and experience, a resume, and a professional plan describing his proposed endeavor and claimed eligibility for a national interest waiver.

As noted above, the Director issued a RFE, allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the requested classification and for the national interest waiver. The Petitioner's response to the RFE includes, in part, an updated resume, an additional recommendation letter, evidence of potential employment opportunities, and an expert opinion letter.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had submitted sufficient evidence to demonstrate that his proposed endeavor has substantial merit, and that he is well-positioned to advance his proposed endeavor. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance, or that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of the labor certification. The Director specifically noted that the record did not demonstrate that the Petitioner's proposed endeavor would have a broader impact on the field outside of his prospective employer or clients. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief with no new evidence. He asserts that the Director "overlook[ed] the clear and compelling arguments" that demonstrate the proposed endeavor "has substantial implications within the manufacturing industry, offers significant economic benefits, enhances societal welfare, and aligns with federal government initiatives."

A. Substantial Merit and National Importance

As noted above, the Director determined that while the Petitioner established that the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance as set forth under the first prong of the analytical framework of *Matter of Dhanasar*, 26 I&N Dec. 884. We agree, for the reasons explained below.

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. *Id.*, at 889.

Upon review of the entire record, we conclude that the Director properly reviewed the provided evidence and analyzed the Petitioner's national importance claims under the first prong of *Dhanasar* using the preponderance of the evidence standard. The Petitioner has not met his burden of proof and provided probative, relevant, and credible evidence establishing the national importance of his endeavor. *Matter of Chawathe*, 26 I&N Dec. at 376.

The Petitioner relies on the importance of improvements and efficiency in U.S. manufacturing and the shortage of skilled automation professionals as evidence of the importance of his endeavor.[7] However, as explained by the Director, the importance of an endeavor is determined not by the industry or occupation it involves, but by what its specific impact will be. *Matter of Dhanasar*, 26 I&N Dec. at 889-890. For example, an endeavor may qualify if it has national implications within a particular field or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.*

In *Dhanasar*, we found that while the noncitizen's work as a science teacher had substantial merit, it did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Id.* at 893. We agree with the Director that in this instance, the Petitioner has not provided sufficient information about his endeavor to establish what its impact on the field of automation and manufacturing would be.

According to the Petitioner's professional plan, he proposes to "offer [his] vast experience in Industrial Automation to American companies." However, the purpose of the national interest waiver is not to facilitate a petitioner's U.S. job search. Anyone seeking such a waiver must identify "the specific endeavor" that they propose to undertake. *Id.* at 889. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation."). Here, the Petitioner has not sufficiently described his proposed endeavor. He has not identified a particular industry in which he proposes to work, nor claimed that his skills differ from or improve upon those already available and in use in the United States. His claims that his employment as an automation technician "will translate into economic benefits for U.S. companies along with the increase in productivity, competitiveness, generation of revenue, creation and support of U.S. jobs, as well as impacting the entire nation in several layers of the society" are insufficient to establish how his endeavor's impact will extend beyond his prospective employers to the broader industrial automation field.

The Petitioner also references an expert opinion prepared by [redacted] Ph.D. of the [redacted] We acknowledge that the expert opinion includes an analysis of the national

[7] We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.

importance of the Petitioner's proposed endeavor. In his analysis Dr. [redacted] generally describes the Petitioner's experience and discusses the importance of "Industry 4.0" for automated manufacturing. He states generally that the Petitioner's proposed endeavor "has significant potential to support the manufacturing sector." However, Dr. [redacted] does not discuss the details of the Petitioner's specific proposed endeavor, including how the Petitioner's employment with a single U.S. company will have a potential prospective impact rising to the level of national importance. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, 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 it does not meaningfully address the details of the Petitioner's specific proposed endeavor and why it would have national importance. His opinion is general in nature, emphasizing the Petitioner's qualifications and concluding that industrial automation is of national importance. "In determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (emphasis added). Dr. [redacted] does not provide a substantive analysis of the Petitioner's specific proposed endeavor. Nor does he suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States.

The record does not indicate that the Petitioner's endeavor will have national implications for the field of industrial automation. It also does not quantify what economic benefits the endeavor will generate, particularly in a depressed area, and so does not show that the endeavor will result in "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* Therefore, the Petitioner has not established that his endeavor will have national importance.

The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the general need for industrial automation in U.S. manufacturing. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining *Dhanasar* prong.[8] *See INS v. Bagamasbad,* 429 U.S. at 25.

[8] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, or that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of the labor certification. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response. The Director addressed the previously submitted evidence in the RFE and decision, and explained how it was deficient in establishing that the Petitioner met the *Dhanasar* prongs and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.

IV. CONCLUSION

The Petitioner has not established that he is eligible for classification as an individual of exceptional ability or that he is otherwise eligible for EB-2 classification. Additionally, as the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude 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.