U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31140046

Date: MAY 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who intends to run an online university, seeks 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. 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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.

Once 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 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,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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

The Petitioner claims to have worked in Guangzhou as a system engineer and project manager before earning earned a doctorate in management science and engineering in China in 2014. After working as an economic researcher, in 2020 the Petitioner established what he calls "a new type of digitized international university" and began serving as its director.[2]

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.[3] 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. The Director determined that the Petitioner had not satisfied the second and third prongs of the *Dhanasar* national interest test.

In a statement submitted with the petition, the Petitioner stated that he "started up a new type of digital international university . . . based on emerging technologies such as blockchain technology, artificial intelligence technology, extended reality technology, and emotional technology. It combines teaching/research/industry and is online-based/offline as a supplement." The record identifies the project as [redacted] In terms of future plans, the Petitioner stated:

> In the future, [redacted] will have several times higher teaching, research, and operational management efficiency than traditional universities. I also plan to connect [redacted] to other USA universities and scientific research institutions through the consortium blockchain. . . .
>
> . . . I will also move the headquarters of [redacted] which combines industry, teaching, and research, to [the] USA, explore the construction of the future global online teaching and research model of USA universities and the establishment of emerging disciplines in USA universities in the future, and vigorously develop the future education and research industry in [the] USA.

In response to a request for evidence (RFE), the Petitioner stated that his university "aims to redefine higher education by combining the power of Web 3.0 technologies with global accessibility, [redacted] and innovative learning approaches. As the world's first [redacted]

[2] We note that the Petitioner previously filed two other immigrant petitions on his own behalf. The Director approved one of those petitions, with receipt number [redacted] in January 2024. In the approved petition, the Petitioner sought classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The record of proceeding for the approved petition is not before us.

[3] The Petitioner received a master of engineering degree in project management in 2008 and a doctorate in management science and engineering (financial engineering and economic development) in 2014.

[redacted] it strives to create an inclusive, technologically advanced, and globally connected educational environment for learners across the world."

After the Petitioner responded to the RFE, the Director determined that the Petitioner had established the substantial merit and national importance of the proposed endeavor, but had not satisfied the second and third *Dhanasar* prongs. We agree with the Director that the Petitioner has not satisfied the second prong. Because this issue is, by itself, sufficient to determine the outcome of the appeal, we need not discuss the first and third prongs in detail, and we reserve the Petitioner's appellate arguments regarding the third prong of the *Dhanasar* national interest framework. *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).

To determine whether an individual is well positioned to advance the proposed endeavor, as required under the second *Dhanasar* prong, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In denying the petition, the Director stated several conclusions regarding the second *Dhanasar* prong:

- The Director acknowledged the citation of published articles by the Petitioner, but concluded that "the record does not include sufficient evidence to demonstrate how these research projects relate to the petitioner's specific proposed endeavor."
- Regarding two job announcements that the Petitioner submitted, the Director concluded that "neither of these positions appear to be related to the petitioner's proposed endeavor."
- Although the Petitioner "submitted a business model," the document "does not provide sufficient detail as to the specific steps, projects, and/or partnerships that the petitioner intends to pursue in order to advance his proposed endeavor."
- The Petitioner attempted "a comparison between his proposed endeavor and other [redacted] start-ups," but the Petitioner did not sufficiently corroborate his assertions, and "[a] comparison between an endeavor and its competitors . . . is an insufficient measure of the progress that the [petitioner's] endeavor has made."

We will consider each of these matters below.

On appeal, the Petitioner asserts that the Director "selectively ignored" and "lumped together" the Petitioner's evidence, made "errors of judgment," and "made subjective assumptions and jumped to conclusions . . . based on descriptions and evidence that he/she does not understand." We will discuss the Petitioner's appellate arguments as appropriate.

In his initial statement, the Petitioner mentioned the three-pronged framework described in *Dhanasar*, but did not specify how his evidence satisfied those prongs. The Petitioner documented his 2014 doctoral degree and submitted a résumé on which he claimed the following experience:

- ICT System Engineer at a bank in Guangzhou, 2000-2005
- ICT Project Manager for the Guangzhou transit system, 2005-2011
- Postdoctoral Fellow for an economic institute in Hong Kong, 2014-2016
- Research Scientist at a digital business center in Hong Kong, 2016-2018
- Principal Researcher at a digital business center in Hong Kong, 2018-2020
- Director of [redacted] in Hong Kong, 2020-present

The Petitioner did not submit letters from his former employers or other evidence to provide details about his past employment. The most direct documentation of his past employment was in the form of two qualification certificates from the Ministry of Personnel of the People's Republic of China, showing "Intermediate" qualifications as an Information System Supervisor in 2006 and in Financial Economics in 2007.

In the RFE, the Director acknowledged the Petitioner's educational credentials, but stated that his "educational qualifications, on their own, are insufficient to demonstrate that he is well positioned to advance the specific proposed endeavor." In response to the RFE, the Petitioner cited his degrees and occupational certifications to show that he "has the education and knowledge . . . to construct . . . [and] operate [redacted]" The Petitioner stated that his degrees and qualification certificates show that he "has the skill . . . to construct the project of [redacted] . . . [and] to operate [redacted] but he did not explain how those credentials relate directly to establishing and operating a university.

The Petitioner cited "two . . . Web 3.0 job advertisements" to show that "constructing a [redacted] project requires knowledge in multiple fields . . . , such as game theory, mechanism design, complex systems, [redacted] crypto-economics, blockchain, and so on." The two job announcements, however, do not relate to "constructing a [redacted]" One announcement is for a "Lead Token Engineer" at a startup company that seeks "to become the basic plumbing for dCommerce," and the other is for a "6-month paid fellowship" as a "Web3 PhD Research Fellow" at a cryptocurrency exchange.

The Director concluded that "neither of these positions appear to be related to the petitioner's proposed endeavor," and the requirements listed in the job announcements do not show that the Petitioner is well positioned to advance his proposed endeavor. On appeal, the Petitioner states that his "intention in providing two job advertisements was completely wrongly distorted by the officer." The Petitioner does not explain what his intention was. When he submitted the announcements in response to the RFE, he stated that he did so "as reference [to] show[] that constructing a [redacted] project requires knowledge in multiple fields." But neither job announcement involves "constructing a [redacted]" so the Petitioner has not established their relevance to that point. The job announcements include words such as "blockchain" that also appear in the Petitioner's description of his proposed endeavor, but this does not establish that the jobs in the announcements are comparable to the proposed endeavor. The burden is on the Petitioner to establish the relevance of the job announcements.

The Petitioner states that the Director "not only did not understand the facts, but also did not ask the petitioner to provide more evidence, so he/she made subjective assumptions and jumped to conclusions." The Director did "ask the petitioner to provide more evidence," by issuing an RFE. At

that point, the burden was on the Petitioner to provide enough information to allow the Director to make an informed decision.

The Petitioner's initial submission included a printout from *Google Scholar*, indicating that he wrote or co-wrote nine scholarly articles published between 2007 and 2014, three of which had accumulated a total of 30 citations. The articles relate to subjects such as "China's housing market" and "automatic ticketing system[s] for urban rail transit." One of the Petitioner's articles earned the Petitioner a "Certificate of Honor" for "the Second-class Award for 3rd Guangzhou Metro Excellent Papers" in 2009.

In the RFE, the Director acknowledged the citations, but stated that "the record does not include sufficient evidence to demonstrate how these research projects relate to the self-petitioner's specific proposed endeavor, or how the number of citations reflects a level of interest in his work from relevant parties sufficient to meet this prong."

In response, the Petitioner stated that the *Google Scholar* citation record "is incomplete." The Petitioner submitted a table with links to *Baidu Scholar*, showing 166 citations, 161 of which pertain to one article, [redacted] published in *Urban Rail Transit Research* in 2009. The abstract of this article reads:

[redacted]

The Petitioner contended that the articles and citations are relevant because "The Infrastructure of a [redacted] and the AFC system are both Information Systems," and the Petitioner "will now also to a large extent be able to advance analysis and design on the infrastructure of a [redacted]' The Petitioner asserted that his experience with automatic fare collection systems shows his "ability to promote the construction of complicated information system projects," and that, like public transit systems, "public higher education resources are also public resources."

In denying the petition, the Director concluded that "the record does not include sufficient evidence to demonstrate how these research projects relate to the petitioner's specific proposed endeavor." The Director acknowledged the citations of the Petitioner's published work, but concluded that the Petitioner had not shown that these citations show "a level of interest in his work from relevant parties" in the context of the proposed endeavor. The Director added: "The topic of 'public resources' is broad and could [encompass] many different disciplinary fields. . . . It remains unclear how the petitioner's research in public transportation and housing relates to his proposed endeavor of establishing a [redacted]

On appeal, apart from disputing a peripheral issue concerning whether [redacted] is a "public resource," the Petitioner does not address the Director's conclusions regarding the Petitioner's published work and the citations to that work.

Regarding his university, the Petitioner initially submitted a copy of the university's incorporation form, identifying the Petitioner as its director, and a printout from the university's website. The printout is only partially legible and does not establish the extent to which the university functions as a degree-granting educational institution, or what steps remain to be taken for the university to begin functioning. The Petitioner did not submit detailed information about his university and did not specify what resources would be necessary for him to transfer its headquarters to the United States.

In response to the RFE, the Petitioner submitted [redacted] Business Model." In this document, the Petitioner listed:

- Revenue Streams: tuition fees, sponsored courses, premium services, and partnerships;
- Key activities: course creation, instructor recruitment, student acquisition, community building, blockchain integration, and continuous improvement;
- Key resources: platform development team, marketing and growth team, academic advisory board, and strategic partnerships;
- Value proposition: accessibility, transparency, personalization, and innovative teaching methods; and
- Challenges: competition, regulatory hurdles, and technical complexities.

The Petitioner stated that [redacted] business model comprises several key components:"

- Tokenomics;
- [redacted]
- Smart Contracts;
- [redacted]
- Artificial Intelligence and Machine Learning;
- Partnerships and Collaborations;
- Revenue Streams;
- Cost Structure;
- Marketing Strategy; and
- Roadmap.

The Petitioner provided a sentence or two about each of the listed elements. For instance, under the heading "Roadmap," the Petitioner stated: [redacted] will launch a minimum viable product (MVP) in the third year, focusing on a limited number of degree programs and certifications. The platform will expand its offerings, user base, and geographic reach over time, with a goal of becoming a fully-fledged, globally recognized institution within ten years."

In terms of progress toward achieving the proposed endeavor, the Petitioner stated his intention to "register [a limited liability company] in Wyoming" and establish a headquarters in [redacted] Florida. The Petitioner submitted a copy of a Wyoming statute favorable to the formation of [redacted]

[redacted] but submitted no evidence that he had taken any concrete steps toward establishing the company in the United States.

The Petitioner submitted a chart showing "the current progress of the Start-up Project of three [redacted] showing that [redacted] has the fastest progress and the highest [redacted]" The chart indicated that [redacted] was founded in [redacted] 2020, more than three years before the Petitioner filed the petition in May 2023, but it provided no information about enrollment, funding, and other benchmarks that might have illustrated the Petitioner's progress in advancing the proposed endeavor. The chart indicated that [redacted] has "[m]ore than 20" of its "[o]wn [c]ourses" and "[m]ore than 10" "[r]esearch projects," but the Petitioner did not submit documentary evidence that might have provided more details. The evidence in the record does not establish that [redacted] has any faculty or students, or exists beyond the planning stages.

The Petitioner submitted summary information about [redacted] Matriculation Teaching and Research Project," which the Petitioner stated that the university "is actively carrying out recently." The Petitioner stated that the project:

> will be the first in the world to adopt the "Token Engineering Method" to design the [redacted] incentive mechanism of matriculation teaching and research; design the [redacted] of matriculation teaching and research model to build a digital Matriculation teaching and research ecosystem.
>
> . . . The biggest highlight of this project's research is that for the first time in the world, a [redacted] issues NFT to tutors recognized by the [redacted] in the education industry to construct a [redacted] incentive mechanism between tutors and students. This is an epoch-making step for the global higher education reform process.

The Petitioner did not further explain the significance of the project or submit supporting documentary evidence to establish how, and to what extent, the project is already underway as claimed.

In the denial notice, the Director stated:

> [T]he business model's descriptions of the petitioner's plans to advance his endeavor in the U.S. remains broad, and does not provide sufficient detail as to the specific steps, projects, and/or partnerships that the petitioner intends to pursue in order to advance his proposed endeavor. The submitted business model is insufficient to show that the petitioner's broad plans for his endeavor constitutes meaningful progress towards achieving the proposed endeavor, or interest from outside parties in her specific proposed endeavor. . . . [T]he record does not sufficiently demonstrate that the petitioner has made preparations or serious plans for embarking upon and advancing his proposed endeavor.

The Director added that the Petitioner's self-comparison with "competitors [which] appear to have been arbitrarily chosen by the petitioner" lacks corroboration and "does not appear to be an objective measurement between the listed organizations."

On appeal, the Petitioner states that the Director "indiscriminately conflat[ed] the entities formulating new [redacted] business models with those formulating [redacted] business models." The Petitioner contends: "The business model of the [redacted] is operated by its [redacted] through continuous iteration through the continuously improving [redacted] rather than written." The Petitioner also maintains that most [redacted] projects . . . do not require external investment. . . . This is also common sense within the profession. The reasons are described in the business model [previously] submitted by the petitioner."

[redacted] exists as a legal entity abroad, but otherwise the Petitioner has not established that he has made significant progress toward achieving the proposed endeavor. Also, the Petitioner has not shown that he has any experience in running a university, and he has not shown that his past experience and training are directly relevant to the proposed endeavor apart from relating to the same general area of information technology.

Unsubstantiated assertions in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). Attributing such assertions to "common sense within the profession" does not suffice in this regard. The burden of proof is on the Petitioner to substantiate his assertions. Furthermore, one of the "Challenges" listed in the previously submitted business model is that "[b]uilding a robust, scalable, and secure blockchain-based platform requires significant investment in infrastructure and technical expertise." This statement appears to conflict with the Petitioner's assertion on appeal that such projects "do not require external investment."

The Petitioner asserts that he "provided a large amount of strong evidence," which the Director did not give sufficient weight "due to . . . lack of knowledge and error in judgment." The record shows, however, that the Petitioner has submitted little documentary evidence that relates directly to the proposed endeavor. The materials in the record predominantly relate to the Petitioner's earlier activities and the Petitioner's unsubstantiated assertions relating to the nature of the proposed endeavor and his estimation of his own ability to advance that endeavor.

We agree with the Director that the Petitioner has not met his burden of proof to establish that he is well positioned to advance the proposed endeavor. For that reason, we will dismiss the appeal.

III. CONCLUSION

The Petitioner has not established that he is well positioned to advance the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.