U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33951550

Date: OCT. 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a safety engineer, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 record did not establish that the Petitioner's eligibility for the requested national interest waiver. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) 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. A U.S. 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 establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies as an advanced degree professional, but failed to establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework and dismiss the appeal.

A. 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.*

The record reflects that the Petitioner intends to work in the United States as a safety engineer across various industries. According to the Petitioner's professional plan, he intends to "carry[] out risk analysis and identify[] potential hazards and vulnerabilities in specific work environments, mainly in the construction, industrial, agriculture, and mining sectors, aiming at the implementation of preventative measures and the creation of safe working environments through specialized techniques and tools." He will work closely with businesses to "minimize[e] workplace accidents, injuries and associated costs," and he plans to "implement effective safety measures and contribute to improved productivity, reduced downtime, and enhanced overall efficiency in business operations." As a safety engineer, the Petitioner claimed he could perform a number of critical functions including creating strategic plans for implementing work safety regulations, providing health and safety trainings in the work environment, and improving employee productivity and efficiency by creating comfortably and physiologically adapted work environments to reduce fatigue and discomfort. Given his experience as a safety engineer abroad, the Petitioner claimed he would "make contributions of substantial significance to the industry."

Additionally, the Petitioner asserted that he would "contribute to public safety initiatives by actively participating in community programs, volunteering . . . and sharing his expertise with the general public," and he would "participate in advocacy and educational initiatives related to safety." Ultimately, the Petitioner claimed that his work would significantly benefit the U.S. economy by

[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).

reducing the economic burden of workplace accidents and injuries and creating a stable and reliable workforce. Additionally, he claimed his work would contribute to societal welfare because due to improved worker safety.

In support of his endeavor, the record contains two professional plans, an expert opinion letter, various letters of recommendations, correspondence from U.S. employers interested in employing the Petitioner in the United States, and photographs and information relating to the Petitioner's past projects. Additionally, the Petitioner also cited to several industry articles, reports, and government publications providing statistics on workplace injuries and fatalities, the importance safety programs, economic benefits of safety programs, and ordinances designed to combat dangerous workplaces. [2]

Upon review of the complete record, the Director concluded that, while the Petitioner established the substantial merit of his endeavor, the Petitioner had not shown how his work with U.S. companies would rise to the level of national importance contemplated in *Dhanasar*. Specifically, the Director determined that the record did not show his work would result in broader implications to his field, beyond the benefit to his prospective employers or clients. Additionally, the Director determined that the Petitioner had not identified the specific projects he intended to undertake in the United States. Moreover, the Director determined that the Petitioner did not establish that his endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

On appeal, the Petitioner generally disagrees with the Director's conclusion, asserting that his endeavor is "undoubtedly of national importance, given its wide-ranging implications for the economy, business sector, technology advancements, and societal welfare." In doing so, however, he primarily relies on the same arguments he previously put forth before the Director without explaining how the Director erred in their conclusions, or identifying the "wide-ranging implications" which would be directly attributable to his endeavor, rather than his industry. And the Petitioner does not address the Director's determination that the Petitioner had not identified specific projects he planned to pursue in the United States or otherwise provide insight into their broader implications.

Upon de novo review, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance. The Petitioner's claims on appeal primarily rely on the importance of the safety engineer occupation and industry, rather than the prospective impact of his specific endeavor. But 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 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.

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

Although the Petitioner's statements in the record reflect his intention to provide valuable services to his future employer(s) and customers, the record does not support his assertions that his work will result in broader implications to the field, beyond the potential benefits to his immediate employer(s) or customers. While he asserts, for example, that by providing training and collaborating with other safety professionals, he will contribute to the development of industry standards, he does not explain how any prospective training would be disseminated to the field at a level commensurate with national importance or result in "the development of industry standards and best practices," rather than benefiting his immediate employers and colleagues. The Petitioner has not shown, for example, that any best practices, even if adopted by his employer(s) or customers, would otherwise lead to broader implications to the field. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

Additionally, on appeal the Petitioner claims that he will "leverage automation, robotics, and artificial intelligence [to] optimize processes, enhance workplace safety, and drive sustainability," but the Petitioner has not shown how relying on these tools will lead to broader implications to the field, beyond the immediate benefits to his employer(s) and customers. Similarly, we acknowledge the evidence on record reflects U.S. government interest in enhancing worker safety, but the Petitioner did not sufficiently explain and support with evidence how his proposed endeavor would have a national impact on these broad government initiatives. 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. *Dhanasar* at 893. Here too, we agree with the Director that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his prospective employer(s) or customers to impact his field more broadly at a level commensurate with national importance.

And we agree with the Director's conclusion that the Petitioner's assertions regarding a claimed shortage in his field, and the letters of interest from prospective U.S. employers do not establish the national importance of his specific endeavor. The national interest waiver is not intended to address labor shortages. A shortage of qualified professionals alone does not render the work of an individual safety engineer nationally important under the *Dhanasar* precedent decision. Several of the Petitioner's claims of national importance could reasonably apply to any safety engineer in the field who has a positive impact on their employer's operations, but Congress did not provide a blanket exemption for this occupation with respect to the job offer and labor certification requirement

The testimonial evidence in the record, including the expert opinion letter and the letters of recommendation, also provide little probative value in establishing the national importance of the Petitioner's endeavor. For instance, in the expert opinion letter from Dr. A-A- they focus primarily on the Petitioner's background as well as the importance of the occupational safety field to establish the national importance, concluding that he would provide benefits to U.S. businesses, but Dr. A-A- did not explain how these benefits, even if realized, would broadly impact the field. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is

not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter and the recommendation letters lack probative value with respect to the national importance of the Petitioner's specific endeavor.

The record also does not establish that the Petitioner's endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See Dhanasar* at 890. On appeal, the Petitioner claims that, by creating safe work environments his endeavor will result in economic benefits because his work will enhance the reputation of U.S. businesses and avoid costly workplace injuries. But the Petitioner's economic claims primarily rely on the cumulative economic benefits of advancing occupational safety rather than establishing how the Petitioner's endeavor will result in the substantial economic benefits contemplated in *Dhanasar*. *Id.* Additionally, although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not provided projected employment numbers and revenue growth contributable to his specific endeavor to establish substantial economic benefits directly contributable to his endeavor. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

And, while we recognize that the Petitioner has had a successful career and has executed several critical projects for his former employers, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor. We conclude that he has not.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

B. Eligibility for the Underlying Classification as an Advanced Degree Professional

While the Petition must be dismissed as the Petitioner has not satisfied prong one of the *Dhanasar* framework, upon a de novo review of the record, we will withdraw the Director's determination that the Petitioner qualifies for EB-2 immigrant classification as an advanced degree professional because the record does not support such a conclusion. Specifically, while we acknowledge the record establishes the Petitioner has the foreign degree equivalent of a U.S. bachelor's degree, the record does not establish the Petitioner attained five years of post-baccalaureate experience.

As previously stated, the regulatory definition of "advanced degree" states, in pertinent part:

> A United States baccalaureate degree or a foreign equivalent degree *followed by* at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

8 C.F.R. § 204.5(k)(2) (emphasis added).

To demonstrate five years of post-baccalaureate experience, a petitioner must provide "evidence in the form of letters from current or former employer(s) showing that [the petitioner] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B). The letters must also include "a specific description of the duties performed by [the petitioner]." 8 C.F.R. § 204.5(g)(1).

The record reflects that the Petitioner completed his bachelor's degree in July 2015, and subsequently completed a *lato sensu* specialization course in occupational safety engineering in May 2017. The Petitioner has not claimed that his *lato sensu* course is the foreign degree equivalent of a U.S. master's degree, nor does the record support such a finding.[3] As such, to show he has obtained an advanced degree, the Petitioner must establish he has obtained five-years of progressive experience in the specialty following the completion of his bachelor's degree. 8 C.F.R. § 204.5(k)(2). While the Petitioner provided a letter documenting his experience from October 2009 through January 2015, because this experience occurred prior to the completion of his bachelor's degree in July 2015, we cannot consider that experience to satisfy the regulatory requirements. Therefore, we can only consider the following evidence documenting his post-baccalaureate experience: occupational safety technician with [redacted] from March 2016 to November 2017 (1 year and 8 months); safety occupational technician with [redacted] from July 2018[4] to March 2019 (8 months); occupational safety technician leader with [redacted] from November 2020 to March 2021(4 months); and as a HSE supervisor with [redacted] from February 2021 to January 2022 (12 months). This accounts for approximately 3 years and 8 months of experience.

Accordingly, the Petitioner has established less than five years of post-baccalaureate experience in the specialty, and has not shown he has an advanced degree. *See* 8 C.F.R. § 204.5(k)(2). As the Petitioner has not shown that the proposed endeavor is of national importance under prong one of the *Dhanasar* analytical framework, it would serve no legal purpose to issue a request for evidence for further investigation and analysis of the Petitioner's categorical eligibility for EB-2 classification. Nonetheless, the Petitioner should be prepared to address this is in any future filings.

III. CONCLUSION

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning eligibility under the *Dhanasar* framework, as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *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).

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[3] We also reviewed the American Association of Collegiate Registrars and Admissions Officers' Electronic Database for Global Education (EDGE), which states that *lato sensu* programs are for professional development and specialization, and lead toward professional certificates instead of graduate degrees. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge.

[4] While the Petitioner's resume indicates his employment with this company began in February 2018, the letter only confirms his employment beginning July 2018. Nonetheless, even if the letter documented the additional five months of experience, the Petitioner would still not have documented five years of post-baccalaureate experience.

ORDER: The appeal is dismissed.