U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34277309

Date: OCT. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 was eligible 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.

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 the requisite degree of expertise and will

[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 individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

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,[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.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as an individual of exceptional ability, but did not establish his eligibility for the requested national interest waiver. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

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.

The record reflects the Petitioner intends to continue his career as an entrepreneur in the field of logistics and transportation. Due to his prior experience in passenger transport management, cargo transport, and tourist transport, the Petitioner plans to operate his own company, [redacted] which will specialize in executive ground transportation services, and offer a "comprehensive range of services [to] include[] airport transfers, corporate travel, chauffeur services, point-to-point transfers, roadshow services, luxury vehicles, personalized services and 24/7 availability." According to the Petitioner's business plan, the company would initially operate in [redacted] FL and expand to [redacted] PA and [redacted] CO during the third and fifth year of operations. Ultimately, the Petitioner claimed his company would "introduce innovative transportation solutions and eco-friendly

[3] *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).

practices, enhancing the efficiency and sustainability of shuttle and executive services," and "could set new standards in the shuttle and executive transport service sectors" which align with national objections of infrastructure development and enhancing urban mobility. Accordingly, he asserted that his company would improve the daily quality of life and safety for individuals in the United States while also contributing to the U.S. economy.

In support of his endeavor, the record contains a five-year business plan, letters of recommendation from prior customers commending the Petitioner's expertise in shuttle and transportation services, an expert opinion letter, documents and information relating to his transportation company abroad, as well as articles and industry reports discussing the importance of small businesses in the United States, the economic importance of immigrants and entrepreneurs to the U.S. economy, and the transportation and logistics industries.[4]

Upon review of the record, the Director concluded that, while the Petitioner's endeavor was substantially meritorious, the evidence did not demonstrate the Petitioner's proposed endeavor has national importance. Specifically, the Director concluded that the proposed transportation business would not offer benefits that would impact the industry more broadly at a level commensurate with national importance. Moreover, the Director determined that he did not demonstrate there was a significant potential to employ U.S. workers or otherwise generate substantial positive economic effects, particularly in an economically depressed area.

On appeal, the Petitioner generally claims that the Director did not apply the correct burden of proof and failed to properly consider the evidence on record establishing both his vast experience in the field well as the impact of his proposed business endeavor. Relying on the same arguments previously put forth, he maintains that the evidence was sufficient to demonstrate the national importance of his endeavor.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we agree with Director's evaluation of the evidence, and conclude it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

On appeal, the Petitioner continues to rely on the transportation industry, as well as the importance of entrepreneurship in general, to assert the national importance of his endeavor. However, when considering the national importance of a proposed endeavor, the industry alone is not sufficient to establish national importance. We agree that the evidence in the record regarding the importance of the industry establishes the substantial merit of the Petitioner's endeavor, but when evaluating the national importance, we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Accordingly, in *Dhanasar* we

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

explained that we "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 claims on appeal that, through his company, he intends to "revolutionize the industry through innovation, efficient practices, and unparalleled customer service," and he is "poised to generate employment opportunities within the sector and stimulate economic growth," but the record does not support such assertions. He has not explained, for example, how the transportation services his company intends to offer—primarily airport shuttle services and executive transportation services—would impact the industry at a level commensurate with national importance, or how any his efficient practices developed would be disseminated to the industry more broadly. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 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). In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's customers, like the offerings outlined in the business plan, would not have broader implications in the field. *Id.*

We also agree with the Director that the record does not establish the Petitioner's endeavor would result in significant economic benefits as contemplated in *Dhanasar*. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. First, we acknowledge the Petitioner's assertions that he intends to operate his business within cities designated as HUBZones by the Small Business Administration, but he has not explained how his prospective employment of U.S. workers in these designated underutilized business zones would have substantial positive economic effects commensurate with national importance. *See Dhanasar*, 26 I&N Dec. at 890. In his business plan, the Petitioner indicated that by the fifth year of operations he anticipated generating total sales of $5,932,212 while employing 58 individuals, resulting in an annual payroll expense of $1,925,821. Notably, while the Petitioner indicated that the 58 employees will consist of professional drivers, sales representatives, shuttle drivers, customer services representatives, automotive technician and mechanics, among others, the business plan does not provide sufficient explanation for the basis of these employment projections, or his financial projections. But even if the endeavor's revenue and job creation projections were sufficiently explained and supported, they do not establish that his company would operate on a scale rising to the level of national importance contemplated in *Dhanasar* and, as stated, the Petitioner has not explained how his proposed employment numbers and revenue would impact his company's area of intended operations. So, the fact that the Petitioner's proposed endeavor may operate in HUBZones does not establish that the Petitioner's endeavor is of national importance.

We also reviewed the expert opinion letter from Dr. B-B-, and conclude it offers little explanation to establish the national importance of the Petitioner's proposed endeavor. In their letter, Dr. B-B- makes broad assertions regarding ways the Petitioner's company could "improve the quality of life and safety of citizens," without identifying specific ways in which the Petitioner's business would impact his

field more broadly, beyond the benefits provided to his customers. For example, while they state the benefits of offering accessible transportation and ride-sharing and carpooling services, they do not explain how these benefits would go beyond the Petitioner's direct customers. 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 lacks relevance with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

B. EB-2 Classification as an Individual of Exceptional Ability

While the appeal must be dismissed as the Petitioner has not satisfied prong one of the *Dhanasar* framework, upon a de novo review of the record, we also withdraw the Director's determination that the Petitioner qualifies for the requested EB-2 immigrant classification as an individual of exceptional ability because the record does not support such a conclusion.

The Petitioner asserted eligibility for the requested EB-2 immigrant classification as an individual with exceptional ability by claiming he met five of the six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii): official academic record in the specialty at 8 C.F.R. § 204.5(k)(3)(ii)(A), ten years of full-time experience in the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B), commanding a salary demonstrating exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(D), membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E), and evidence of recognition for achievements and significant contributions to the industry at 8 C.F.R. § 204.5(k)(3)(ii)(F).

In their decision, the Director determined the Petitioner satisfied at least three of the six evidentiary criteria, and concluded that, after consideration of the evidence under a final merit's determination[5], the Petitioner established himself as an individual of exceptional ability. Notably, however, the Director did not explain which evidentiary criteria the Petitioner met, or how the evidence in the record satisfied the criteria. And the decision does not explain how the totality of the evidence demonstrates the Petitioner has a degree of expertise significantly above that ordinarily encountered in his field.[6] As such, for the reasons discussed below, we withdraw the Director's determination that the Petitioner qualifies for EB-2 classification as an individual of exceptional ability.

In the Director's request for evidence (RFE), the Director determined that the Petitioner met the evidentiary criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (B), but did not satisfy the evidentiary criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(E) and (F). In response to the Director's RFE, the Petitioner asserted

[5] *See,* 6 *USCIS Policy Manual*, *supra*, F.5(B)(2).
[6] *Id.*

that he met the evidentiary criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(D),(E), and (F). For the reason's discussed below, we conclude that the record does not establish the Petitioner has met the evidentiary criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(D),(E), and (F), and therefore he has not met at least three of the six criteria.[7]

Evidence that the Petitioner has commanded a salary, or other remuneration for services, which demonstrate exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of their claimed exceptional ability *relative to others working in the field.*[8]

To satisfy this criterion, the Petitioner submitted copies of his 2023 tax return confirming the income and profits he received from his business abroad. However, he did not provide evidence comparing his income to others working in his field, or otherwise explain how his earnings from his company are indicative of exceptional ability relative to others working in his field. The Petitioner bears the burden of establishing that they meet each criterion with relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. He has not done so here, and we thus conclude that he has not satisfied this criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner initially submitted evidence of their memberships in the Association of Supply Chain Management and the American Management Association. In their RFE, the Director informed the Petitioner that the regulatory definition of "profession" includes an occupation whose minimum requirement for entry is a U.S. baccalaureate degree or its foreign equivalent. 8 C.F.R. § 204.5(k)(2). The Director explained that, because the Petitioner did not provide evidence to establish that either association requires at least a U.S. baccalaureate degree or its foreign equivalent as a minimum requirement for membership or that they otherwise constitute as professional associations, the Petitioner did not satisfy this criterion.

In response to the Director's RFE, the Petitioner did not acknowledge the Director's conclusions that the evidence did not show the associations were "professional associations" as contemplated by the regulations. Instead, the Petitioner submitted evidence of their membership in the National Small Business Association beginning a month after the Director issued the RFE, along with a printout from the association's website providing background information on the organization. First, a petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Additionally, the record also does not establish that the National Small Business Association limits its memberships to "professionals," as contemplated by the regulation, rather the evidence states the organization is a "small-business advocacy organization," Without more, we cannot conclude the Petitioner has met this criterion.

[7] The Petitioner did not claim eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) relating to having a license to practice the profession. Accordingly, we will not discuss this criterion.
[8] See *generally* 6 USCIS Policy Manual, supra, at F.5(B)(2).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

The plain language of this criterion requires the Petitioner to establish that he has received recognition for "achievements and significant contributions to the industry or field." The record contains numerous letters from the Petitioner's former customers, colleagues, and peers in the industry commending the Petitioner's skills, abilities, and business acumen in providing various transportation services. For example, in the letter from E-A-N-, he praised the Petitioner for "exceeding [his] expectations" and "achiev[ing] significant savings based on the strategies [he] presented" to help the writer's company develop route and driver schedules. Additionally, in the letter from S-R-B-L, the writer elaborated on the Petitioner's work to alleviate the difficulties faced in parking and performing preventative maintenance on buses during out-of-state trips, explaining that his "initiative significantly reduced expenses, demonstrating his ability to think strategically and find innovative solutions." Similar complementary letters were provided by the Petitioner's past customers, commending him for excellent services and his "willingness to go above and beyond to provide personalized solutions" for his customers. But these letters do not identify significant contributions he has made to the industry or field. Rather, the letters highlight his business achievements, ways in which he contributed to the operations of his customers' businesses, and establish that he was successful in his prior pursuits and has served as a trusted business partner and transportation provider.

Because the evidence does not show that his work has had an impact beyond his customers and their specific projects at a level indicative of achievements and significant contributions to the industry or field, the Petitioner has not established that he fulfills this criterion.

Even though the Petitioner has not established that he meets three of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), we nonetheless have reviewed the record in the aggregate, and conclude that the record does not establish the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in his field.

In reviewing the totality of the evidence in a final merits determination, we consider the quality of the evidence.[9] While we acknowledge that the evidence demonstrates that the Petitioner has extensive training, and experience within the transportation field, as well as memberships in associations supporting the business field, this evidence does not establish he possesses expertise significantly above that ordinarily encountered in the field. In the record, the Petitioner asserts that he has a strong background in financial management and expertise in monitoring expenses of fleet operating costs, and that he "specializes in fleet monitoring and efficiency, implementing smart solutions, and reducing gas costs," however, the Petitioner does not explain how this positions him as an individual with expertise *significantly* above those in his filed. For example, the Petitioner has not explained what specific unique experience he has that shows his expertise is *significantly* above others in his field. And while the record contains multiple letters of recommendation, the letters speak broadly regarding the Petitioner's expertise without indicating that his experience has provided him with expertise above others in the field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

[9] *See also* 6 *USCIS Policy Manual*, *supra*, F.5(B)(2).

Accordingly, the record does not establish the Petitioner qualifies for EB-2 immigrant classification as an individual of exceptional ability, and we therefore withdraw the Director's determination. 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.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a an individual of exceptional ability. Furthermore, the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, and therefore we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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.