U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33732900

Date: OCT. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a fashion communication specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. 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, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not establish he merits a discretionary waiver of the job offer requirement 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.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id. Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] Id.

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." 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. 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 a matter of discretion,[2] 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 Petitioner proposes to work in the United States as a fashion communication specialist. For the reasons discussed below, the Petitioner has not established his eligibility for the EB-2 classification. Moreover, he has not demonstrated that a waiver of the labor certification would be in the national interest.[3]

A. Member of Professions Holding an Advanced Degree

The Director's decision did not determine the Petitioner's eligibility for the EB-2 immigrant classification. The Petitioner submitted evidence to qualify as a member of the professions holding an advanced degree by submitting evidence of his foreign degree being the equivalent of a U.S. bachelor's degree and five years of progressive experience in his specialty. Upon de novo review, the Petitioner has not established his eligibility for the EB-2 classification as an advanced degree professional.

The Petitioner has not demonstrated he has at least a U.S. bachelor's degree or a foreign equivalent degree. The Petitioner provided an academic evaluation indicating his bachelor of arts degree from [redacted] is the foreign equivalent of a U.S. bachelor of arts degree in fashion marketing. However, his academic transcript does not support statements in the evaluation. The evaluation states that in addition to completing coursework in his area of concentration, the Petitioner "completed coursework in general studies" and that "[a] general studies curriculum includes coursework in English, mathematics, the sciences, and the social sciences, which are requisite components of a university degree from an institution of higher education in the United States." But the academic transcript accompanying the Petitioner's degree does not show that the Petitioner completed the general studies courses mentioned in the evaluation. Instead, the coursework listed in the academic transcript is limited to the Petitioner's area of concentration, fashion marketing and communication. Thus, the evaluation is not in accord with the evidence in the record and we cannot

[2] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] While we may not discuss every document submitted, we have reviewed and considered each one.

conclude the evaluation supports the Petitioner's assertion that he has earned the foreign equivalent of a U.S. bachelor's degree. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); 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).

Moreover, the academic transcript indicates the Petitioner attended three academic years of study for the BA Honours fashion marketing and communication program. The academic transcript lists his completed coursework, six courses for each of the three academic years. The course work duration of three years is in contrast to a U.S. baccalaureate degree, which generally requires four years of education. See Matter of Shah, 17 I&N Dec. 244 (Reg'l Comm'r 1977).

Because the record does not show that the Petitioner holds a U.S. baccalaureate degree or a foreign equivalent degree, the Petitioner has not established that he is eligible to be classified as a member of the professions possessing an advanced degree.

B. National Interest Waiver

For the first Dhanasar prong, the Director determined although the Petitioner's proposed endeavor has substantial merit, the Petitioner did not establish his endeavor is of national importance. The Director further found that the Petitioner did not demonstrate he is well-positioned to undertake the endeavor under *Dhanasar's* second prong, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification under *Dhanasar's* third prong.

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889

The Petitioner proposes to work in the United States as a fashion communication specialist. He explains that his work would not be limited to one company, instead he would form partnerships with small and start-up businesses to help improve their reputation, presence, and economic growth through "effective specialized communication strategies." His goal is "to intricately design communication strategies that transcend the conventional" through "brand positioning, the precision of targeted messaging, and the seamless integration of comprehensive marketing communications." Methods he would employ include "strategic influencer collaborations, optimization of digital media platforms, and the artful craft of strategic storytelling." The Petitioner indicates that his work will benefit the U.S. fashion industry; provide economic benefits to the United States by improving the finances of small businesses; and positively impact societal welfare by promoting sustainability, diversity, and corporate social responsibility. We find that the Petitioner's endeavor has substantial merit.

With respect to the national importance of his endeavor, the Director determined that the Petitioner's proposed work would not have the claimed broader implications in his field rising to the level of national importance. The Director further noted that the evidence did not support his proposed endeavor having potential prospective impact, such as significant potential to employ U.S. workers; substantial positive economic effects; or broad impact to enhance societal welfare or cultural or artistic enrichment.

On appeal, the Petitioner contends that the Director erroneously applied the law and regulations to the facts of the case by using a standard of proof higher than preponderance of the evidence. The Petitioner stresses the extensive amount of evidence submitted with his initial petition and with his request for evidence reply. In considering national importance, he claims the Director did not consider the totality of the evidence, specifically his statements, his professional plan, opinions from industry professionals, recommendation letters, documentation of his previous professional projects, a job offer letter, and industry reports and articles. For instance, he claims the Director erred by stating his proposed endeavor is not of national importance because it "targets only the [f]ashion [i]ndustry." Given this statement, he argues the Director could not have considered all his evidence, including his updated personal statement which provides details how his endeavor would impact other industries, such as public relations, marketing, and finance.

Upon de novo review, we conclude the Petitioner has not demonstrated with material, relevant, and probative evidence that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake" and look to evidence documenting the "potential prospective impact" of his work. Id. In Dhanasar, we noted that "we look for broader implications" of the proposed endeavor and 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.

Here, the Petitioner has not offered sufficient evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In particular, he has not described how his fashion communication specialist work with start-up and small businesses will have a broader impact on his field or any other industries beyond the individual business partnerships and clients he intends to serve. While he claims his endeavor will support economic growth, job creation, and societal welfare, and would impact his field and other industries, he has not offered sufficient, specific evidence regarding any projected impact directly attributable to his future work. The standard of proof in this proceeding is a preponderance of 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). Here, based on the evidence

submitted, the Petitioner has not demonstrated with independent, probative evidence his eligibility by a preponderance of the evidence.

The Petitioner stresses his professional knowledge and experience in his field to show his contributions to and influence on not only the fashion industry, but also on other industries related to fashion, including marketing, public relations, and finance. He points to letters of recommendations from fashion industry professionals who previously employed him claiming the letters demonstrate how his influence, creative innovations, and strategies would contribute significantly to societal welfare, provide positive economic effects, and impact his field and other industries. To support his claims, he also submitted his professional presentations from projects with his previous employers.

However, the Petitioner has not offered sufficient information and evidence based on these recommendation letters and presentations to demonstrate his endeavor has the potential to extend beyond his prospective partner businesses to have a broader impact on his field, the U.S. economy, or societal welfare rising to the level of national importance. The recommendation letters attest to the Petitioner's fashion communication work with his previous employers by describing his successful projects, such as luxury fashion shows, social media management, product campaigns, celebrity partnerships for brand ambassadors, and press interactions.

We acknowledge that the Petitioner has been a fashion communication employee who provided his employers with work for their business' fashion event planning, public relations, marketing, and communications. However, the letters the Petitioner submitted do not discuss the Petitioner's endeavor or specific prospective impact, including any potential broader implications of his work. Instead, the letters and project presentations show how the Petitioner's work helped the success of his previous employers' projects and businesses. Moreover, the Petitioner's reliance on his professional knowledge and experience to establish the national importance of his proposed endeavor is misplaced. His professional knowledge and experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890.

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. Id. at 893. Similarly, the record does not demonstrate that the Petitioner's work being a fashion communication specialist for start-up and small businesses has the potential to substantially benefit the field of fashion communication or the fashion, public relations, marketing, and finance industries more broadly, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that his work as a fashion communication specialist would extend beyond his prospective partnership businesses and have a broader impact on the field of fashion communication.

The Petitioner submitted industry articles to show the national significance of his proposed endeavor, including articles about the importance of communication in the fashion industry, digital developments in fashion communication, marketing communication trends for the fashion industry, and the effects of COVID-19 pandemic on the luxury goods market. We recognize the importance of the fashion industry and related industries, such as public relations, marketing, and finance, and the field of fashion

communication and related careers.. However, merely working in an important field or industry is insufficient to establish the national importance of a proposed endeavor. Instead of focusing on the importance of an industry or the need for knowledgeable and experienced professionals in a field, we focus on the "the specific endeavor that the foreign national proposes to undertake." See id. The issue here is whether the Petitioner has established how his proposed endeavor would impact the field of fashion communication, the U.S. economy, or societal welfare more broadly consistent with national importance. The industry articles submitted do not discuss how the Petitioner working as a fashion communication specialist for start-up and small businesses will have the claimed potential prospective impact.

The Petitioner also points to an article written about him in the publication, "The Art Bay" to show the importance of his "strategic mindset in fashion marketing" to a fashion brand's success. He points out that the article shows the importance of communication professionals carefully planning the marketing efforts of a fashion brand to its business' economic and reputational success. However, the article focuses on fashion marketing impacting individual businesses' brands, instead of the Petitioner's work impacting the field more broadly. Moreover, the article does not include the name of the author, only indicating "staff writer." Without an author or further information relating to the article and its publication, we cannot determine whether the article is an independent, objective published article about the Petitioner for consideration as evidence of the importance of his work.

The Petitioner further argues that two opinion letters show the national importance of his endeavor. An expert opinion from an adjunct associate professor of marketing and management at [redacted] in New York points to the Petitioner's expertise and knowledge in his field to show his endeavor is of national importance. For instance, the opinion states the Petitioner's "in-depth experience in marketing, retail and luxury market, communications, and public relations" show he would "strengthen the public and media relations industry in the United States." The opinion further indicates that given the Petitioner's record of success, he would likely be a speaker to congresses, lectures, symposiums, and other professional events to disseminate his knowledge to guide foreign investment to our economy and encourage entrepreneurship which would broadly enhance societal welfare or cultural enrichment. However, the opinion speculates on positive benefits that may arise from the Petitioner's proposed endeavor, instead of detailing how the endeavor would specifically accomplish the goals of strengthening the public and media relation industries or encourage foreign investment. The opinion relies on the Petitioner's experience to provide generalizations about typical business activity, rather than providing insight into how the Petitioner's particular endeavor would have a potential prospective impact.

Another opinion letter from a professor of media studies at [redacted] describes the Petitioner's proposed services and indicates that his communication and brand marketing strategies will improve the success and finances of his partner businesses. However, the opinion does not show how the endeavor's impact would extend beyond the Petitioner's partner businesses. The opinion also describes the growing demand for qualified communication and marketing professionals; the importance of the fashion industry to the economy; the importance of marketing in the fashion industry; the importance of and rising demand for influencer marketing professionals; the growth of ethical and sustainable fashion practices; and the significant advantages the fashion industry has on society, such as making society lively, promoting social change, encouraging modification of irrelevant customs, and discouraging social stratificiation. Simply showing that his work would

support an important industry with a need for qualified professionals is not sufficient to meet the "national importance" requirement under the Dhanasar framework. The labor certification process exists to address labor shortages. The issue here is whether the Petitioner has established that his proposed endeavor has national importance.

Moreover, the opinion's statements that the proposed endeavor would impact matters that are the subject of national initiatives is misplaced. The opinion states that the Petitioner has knowledge of laws and regulations that impact marketing and communication services, including those related to advertising, regulation of commercial emails, digital advertising, and consumer protection laws. The opinion maintains that the endeavor would impact such national initiatives by ensuring his partner businesses are in line with these national initiatives. However, the opinion does not demonstrate the potential prospective impact of his specific endeavor's adherence to national initiatives having national, or even global impact or broader implications at a level of national importance. Instead, the opinion merely describes how the Petitioner would be providing knowledge to his business partners on how to act in accordance with laws and regulations.

Beyond such general assertions, the Petitioner has not demonstrated that the work he proposes to undertake offers the claimed broader implications for his field, the U.S. economy, or societal welfare. His claims depend on numerous factors, and he did not offer a sufficiently direct evidentiary tie between his proposed work as a fashion communication specialist for start-up and small businesses and its impact on his field, the U.S. economy, or societal welfare. Statements and claims alone are not sufficient to demonstrate the national importance of his proposed endeavor. Assertions made without supporting documentation are of limited probative value and do not carry the weight to satisfy the Petitioner's burden of proof. See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm'r 1998). The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. While the Petitioner expresses his desire to contribute to the United States and the field of fashion communication, he has not established with specific, probative evidence that his endeavor has the claimed potential to extend beyond his prospective partnership businesses to impact the field, the U.S. economy, or societal welfare. As such, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments and eligibility under the second and third prongs of Dhanasar. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting 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).

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as an advanced degree professional. Furthermore, since the Petitioner has not established eligibility under

the requisite first prong of the Dhanasar analytical framework, he is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.