U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27855590

Date: AUG. 18, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a supply chain manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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). In addition, "profession" is defined as of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(3).

Furthermore, "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

[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.

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

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[3], grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Director acknowledged that the Petitioner holds the foreign equivalent of a U.S. baccalaureate degree, but concluded that the letters he submitted from former employers initially and in response to the Director's request for evidence (RFE) did not show at least five years of progressive post-baccalaureate experience in his specialty. *See* 8 C.F.R. § 204.5(k)(3)(i)(B). For example, the translated letter from R-D-, "Head of the Logistics Department of National Company [redacted] JSC," stated that he has "known [the Petitioner] since 2018, from the beginning of my work in our company (August 2018 – February 2020)." While R-D-'s letter lists the dates of his own work at [redacted] it does not specify the dates of the Petitioner's employment. Likewise, the translated letter from A-M-A-, Department Director at [redacted] does not indicate the specific dates of the Petitioner's employment with the company.

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[3] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

In his appeal brief, the Petitioner argues that the Director erred in requiring the letters from employers "to articulate [the Petitioner's] exact dates of employment." We disagree. The Petitioner's specific dates of employment are required for determining if he has accrued at least five years of progressive post-baccalaureate experience in his specialty. Because the Petitioner did not present letters from his employers showing he had at least five years of such experience, the Director correctly found that the Petitioner had not demonstrated his eligibility as a member of the professions holding an advanced degree.

Based on a de novo review, we will adopt and affirm the Director's determination that the Petitioner has not provided sufficient evidence to demonstrate that he qualifies as a member of the professions holding an advanced degree. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Prado-Gonzalez v. INS,* 75 F.3d 631, 632 (11th Cir. 1996) (joining "every court of appeals that has considered this issue" holding that an appellate body may affirm the lower court's decision for the reasons set forth therein); *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F3d. 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Here, the Director gave individualized consideration of the evidence the Petitioner submitted with his initial petition and RFE response.

B. Exceptional Ability

In response to the Director's RFE, the Petitioner argued that he "satisfies at least three criteria" set forth at 8 C.F.R. § 204.5(k)(3)(ii). For example, the Petitioner asserted that he meets the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (F). In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). On appeal, the Petitioner does not contest the Director's determination that he has not demonstrated his eligibility as an individual of exceptional ability. *See Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

C. National Interest Waiver

The remaining issue 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. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that he intends to work in the United States as a supply chain manager. He asserted that he plans to "help companies always stay in profit by conducting supply chain management due to my experience and qualifications." The Petitioner further explained: "I can be useful for the development of international business and logistics, in the same way, my knowledge of several languages is useful for working with foreign companies and achieving the best contract terms in the interests of the employing company." In response to the Director's RFE, the Petitioner stated:

> [The Petitioner] intends to work in the field of supply chain management and tower construction (cell tower maintenance). In 2021, [the Petitioner] founded his own company [redacted] The company conducts its business as a subcontractor for equipment maintenance and installation. The core scope of work performed as a subcontractor: network construction and equipment upgrade for telecom giant T-Mobile and other operators. The company eliminates tower malfunctions and upgrades cellular networks to the required standard.
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> [The Petitioner] also analyzes the market and in the future plans not only tower construction but also to supply high-quality and affordable equipment in order to improve the quality of services provided.

The Petitioner provided documentation relating to his formation of [redacted] including its "Certificate of Formation" and registration in the State of Washington. He also presented the company business plan for [redacted] This business plan includes industry and market analyses, information about his company and its services, financial forecasts and projections, marketing strategies, monetization and investment predictions, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company would employ 5 personnel in year one, 10 in year two, 19 in year three, 28 in year four, 36 in year five, and 44 in year six, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while his plan offers revenue projections of $120,000 in year one, $1,483,200 in year two, $3,055,400 in year three, $4,720,600 in year four, $6,482,900 in year five, and $8,346,800 in year six, he did not adequately explain how these earnings forecasts were calculated.

The record includes information about the occupational outlook for logisticians, the third-party logistics industry, the supply chain talent shortage, methods for managing supply chain shortages, and global supply chains in a post-pandemic world. In addition, the Petitioner provided articles discussing factors contributing to the supply chain talent shortage, high demand for supply chain talent, and ways companies are adapting to the supply chain talent shortage. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters of support from R-D-, A-M-A-, P-V-E-, A-B-, and R-K- discussing his business capabilities and supply chain management experience. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. The aforementioned letters do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a supply chain manager in the cell tower maintenance and construction industry offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated that that his undertaking stands to extend beyond his company's business operations "to impact his field or the supply chain industry more broadly at a level commensurate with national

importance." The Director also indicated the Petitioner had not shown that his proposed work will offer "substantial positive economic effects."

In his appeal brief, the Petitioner argues that "[t]he shipping of materials, particularly hazardous materials, clearly meets this criterion, as it is an endeavor this spans many states and involves many different industries as well as the health and well-being of people all over the country." The Petitioner, however, has not provided evidence indicating that his proposed work is focused on shipping hazardous materials or that his specific endeavor in this area has broader implications in the industry or otherwise offers substantial positive economic effects.

The Petitioner further asserts that "[r]ecent disruptions to the global supply chain have further demonstrated the national importance of shipping and logistics." While the Petitioner provided articles discussing the supply chain talent shortage, we are not persuaded by the claim that his proposed endeavor has national importance due to the shortage of professionals in his industry. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner contends that the "maintenance and repair of cell phone towers also self-evidently has a broad, nationwide impact." 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." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. While the Petitioner's statements reflect his intention to provide valuable supply chain management and cell tower maintenance and construction services, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the telecommunications industry, the supply management field, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Washington State or any other region of the United States. While the Petitioner claims that his company has growth potential, he has

not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. In addition, although the Petitioner has asserted that his endeavor will create jobs, he has not offered sufficient evidence that the area where his company will operate is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, tax revenue, or business activity.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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).

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Further, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.