U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28450916

NOV. 07, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a mixed martial arts fighter, seeks second preference immigrant classification 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 had not established eligibility as an individual of exceptional ability and 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

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.

The regulation at 8 C.F.R. § 204.5(k)(2) defines exceptional ability as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." To demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F):

> (A) An official academic record showing that the [individual] has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the [individual] has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the [individual] has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

But meeting at least three criteria does not, in and of itself, establish eligibility for this classification. We will then conduct a final merits determination to decide whether the evidence in its totality shows that a petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(i)(3)(i); *see also* USCIS 6 Policy Manual F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

If a petitioner demonstrates qualification for the underlying EB-2 visa classification, they must then demonstrate 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," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *Dhanasar* provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner shows:

- 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 checked box 1.h in Part 2 of the Form I-140, Immigrant Petitioner for Alien Worker, to indicate that he is applying of a national interest waiver. However, instead of providing evidence that he meets the underlying EB-2 visa classification under Section 203(b)(2)(B)(i) and satisfies the *Dhanasar*'s three-pronged analytical framework, the Petitioner initially claimed that he meets the eligibility as an alien of extraordinary ability under Section 203(b)(1)(A) and presented evidence that he satisfies three out of the ten criteria at 8 C.F.R. § 204.5(h). The Petitioner also did not state his

[1] *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).

proposed employment in Part 6 of the Form I-140 and did not identify his proposed endeavor with his initial filing.

The Director then issued a request for evidence (RFE) on August 17, 2022. The Director stated that the Petitioner did not demonstrate that he is a member of the professions holding advanced degree but that he met three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) as an individual of exceptional ability. The Director also indicated that meeting the minimum three criteria alone does not establish eligibility as an individual of exceptional ability for the EB-2 classification and that a final merits determination based on the totality of evidence is required to show that the Petitioner possessed a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. In addition, the Director requested that the Petitioner present evidence that he meets the three prongs of *Dhanasar*.

In response to the RFE, the Petitioner updated his claims according to the *Dhanasar*'s analytical framework and submitted a personal statement in which he described his background and experience as a mixed martial arts (MMA) fighter and identified his proposed endeavor as "promoting MMA and developing fitness and healthy lifestyles in the U.S., by applying my knowledge and expertise in this field." The Petitioner also submitted a business plan and an expert opinion letter.

A. Qualification for EB-2 Classification

The Director concluded that the Petitioner satisfied three criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (E), and (F) to demonstrate eligibility for an individual of exceptional ability but did not conduct a final merits determination as to whether the Petitioner possessed a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business, as required.

We disagree with the Director that his diploma of a specialist as an attorney issued on July 10, 2014, from [redacted] University in Russia, meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A). This criterion requires an official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning *relating* to the area of exceptional ability. The record shows that the Petitioner studied law in obtaining his diploma, such as criminal law, labor law, administrative law, financial law, etc. The Petitioner does not provide any explanation or documentation showing that his studies somehow relate to the area of his exceptional ability, i.e., martial arts fighting and promoting healthy lifestyle. Therefore, we find that the Petitioner's diploma of a specialist as an attorney does not meet this criterion and withdraw this portion of the Director's decision.

As we determine that the Petitioner only meets two of the six criteria, we need not make the final merits determination and conclude that the Petitioner is not eligible for the requested classification.

Furthermore, the Petitioner does not claim on appeal that he meets the EB-2 classification as a member of the professions holding an advanced degree, and therefore, this issue is deemed waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

B. National Interest Waiver

Because the Petitioner has not established his qualification as an individual of exceptional ability, he is not eligible for a national interest waiver of the classification's job offer requirement. However, we will provide an analysis of his claims under the first prong of the *Dhanasar* framework. Here, the Director found substantial merit in his endeavor but did not find national importance.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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 whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar,* 26 I&N Dec. at 889.

Although the Petitioner claimed that his endeavor is to promote healthy lifestyle in the United States, he does not provide a detailed and specific description of the endeavor he proposes to undertake. Instead, the Petitioner's personal statement generally discusses how the mixed martial arts industry is rising in popularity and increasing in its market size. The Petitioner also asserted that sports and fitness play a significant role in preventing diseases related to obesity and his endeavor relates to the government's priority on benefits of physical activity and healthy eating according to the Presidents' Council on Sports, Fitness & Nutrition (PCSFN). With this information, the Petitioner demonstrated his endeavor's substantial merit but not its national importance. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor. 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.*

The Petitioner also claims that he has expertise and experience as a marital arts fighter and refers to many of his prizes, media recognition, awards, and recommendations. But the Petitioner's qualifications 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 the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong.

In *Dhanasar*, we noted that "[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.* However, the Petitioner has not explained or provided evidence to support how his endeavor will revise and improve the quality of mixed martial arts so substantial as to affect the nation as a whole, not just his own clients. The Petitioner submitted an expert opinion letter from [redacted] a professor in the sport management program within the Department of Kinesiology at [redacted] University. Instead of discussing the details of the Petitioner's specific endeavor or unique methodologies as a mixed martial arts fighter and their impact to the nation, [redacted] reiterates the generalized claims previously made by the Petitioner in his own statement, discussing the growth of the mixed martial arts industry and profession, along with the claims that the Petitioner's endeavor impacts the U.S. government's national initiatives on physical activity.

Here, the expert opinion letter here is of little probative value as it does not meaningfully address the details of the proposed endeavor as to why it would have national importance. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory, but the submission of expert opinion letters is not presumptive evidence of eligibility. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

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." *Dhanasar*, 26 I&N Dec. at 890. The Petitioner asserted in his business plan that he will "open a gym in the future" and that his business will "drive economic stability and growth by providing valuable fitness and boxing services that serve to directly contribute to the improved health of the wider community," "provide jobs, consequently strengthening the economic health of the local area," and create "high levels of revenue" and "higher taxes" which will "then be used to maintain the infrastructure of a city, state, or entire country."

However, the Petitioner has not submitted independent and corroborating evidence that supports his assertions. The business plan does not contain any details about building a gym in the United States or how his business would go beyond the customers and fighters that he would train to provide a broad impact in the field. Instead, the business plan, similar to the personal statement and the expert opinion, discusses the general problem of child obesity and the value of the mixed martial arts. The Petitioner did not offer evidence in the form of projected staffing levels or hiring plans to demonstrate that his proposed gym would employ a significant population of workers in an economically depressed area or that his endeavor would offer a U.S. region or its population a substantial economic benefit through employment levels or business activity. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner does not make any new assertions showing national importance of his proposed endeavor other than what was already submitted to the Director as a part of the RFE response. The Petitioner states on appeal that "USCIS erred in not finding that the evidence in the record established that the proposed endeavor's of national importance" but the record does not sufficiently support his claims. Much like the petitioner's proposed endeavor of teaching in the *Dhanasar* decision, the record does not indicate that the Petitioner's activities would impact the field of martial arts on a broader level, beyond the impact it would have on the Petitioner's individual trainees and clients. Therefore, we conclude that the Petitioner has not established that any aspect of his proposed endeavor would be of national importance, and thus he has not demonstrated his eligibility under the first prong of the *Dhanasar* framework. Accordingly, he has not established that he is eligible for, or otherwise merits, a waiver of the EB-2 classification's job offer requirement, and thus the requirement of a labor certification.

III. CONCLUSION

The Petitioner has not established that he qualifies as an individual of exceptional ability, or that he is otherwise eligible for the underlying EB-2 immigrant visa classification. In addition, he has not shown that that he is eligible for, or otherwise merits, a national interest waiver of that classification's

requirement of a job offer. 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.