U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28510796

Date: NOV. 13, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physical education instructor, seeks classification as a member of the professions holding an advanced degree. *See* 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. 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.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies as an advanced degree professional but that the record does not establish that a waiver of the job offer requirement is 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 immigrant classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the 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. While neither 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,[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.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director further found that the Petitioner established the substantial merit of the proposed endeavor and that he is well-positioned to advance it. However, the Director concluded that the Petitioner did not establish the endeavor's national importance or that, on balance, waiving the job offer requirement would benefit the United States. On appeal, the Petitioner submits a brief and a copy of evidence previously submitted and contends that he has established eligibility for a national interest waiver.

A. Qualification for the EB-2 Classification

Although the Director concluded that the Petitioner established his eligibility for the EB-2 classification, upon de novo review we conclude that the record is not sufficiently clear to establish the Petitioner's EB-2 eligibility.

The Petitioner claims to qualify for the EB-2 classification as an advanced degree professional based upon obtaining the foreign equivalent of a bachelor's degree followed by at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2) (a member of the professions who possesses a bachelor's degree or the foreign equivalent degree followed by at least five years of progressive experience in the specialty will qualify as an advanced degree professional). The record shows that the Petitioner obtained a teaching degree (*licenciatura*) in physical education in 1998 and later the equivalent of one year of graduate-level study in human performance, both in Brazil. The record also shows that the Petitioner has more than 10 years of experience as a fitness instructor and trainer following his degree.

To establish that the Petitioner's teaching degree is the equivalent of a U.S. bachelor's degree, the Petitioner submitted a copy of his diploma and transcripts and a credential evaluation. The credential evaluation states that the degree is equivalent to a U.S. bachelor's degree in physical education, concluding that the program is "substantially similar" to the required coursework for a bachelor's degree in the United States and that the Petitioner "completed at least four years" of coursework.

However, this conclusion does not appear to be supported by the record; the transcripts submitted by the Petitioner do not show that he completed four years of coursework. Although the Petitioner began his program in 1994 and graduated in 1998, the transcripts appear to show that he completed only half of a school year in 1994 and took only one class in 1998, thereby completing only three and a half

[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).

years of coursework. While the Petitioner's courseload during this time could have been accelerated and thus equivalent to a four-year program, this is not established by the transcripts or the credential evaluation. The credential evaluation does not discuss the credit hour requirement for this degree program and whether the degree typically represents at least four years of coursework that the Petitioner completed at an accelerated rate. Moreover, according to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),[2] teaching degrees in Brazil vary in length from two to four years, and only a four-year program represents attainment of a level of education comparable to a bachelor's degree in the United States.[3]

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.* Because the evaluation provides only the generalized conclusion that the degree is "substantially similar" to a U.S. bachelor's degree, does not address the credit hour requirement or typical length of the program, and misstates the length of time during which the Petitioner completed coursework, we conclude that the evaluation is not sufficiently reliable. The Petitioner would need to address this deficiency in any future proceedings where attainment of a bachelor's degree or the foreign equivalent degree is required to establish eligibility. *See* 8 C.F.R. § 204.5(k)(2).

B. Eligibility for a National Interest Waiver

We turn now to the Petitioner's request for a national interest waiver under the *Matter of Dhanasar* framework. The Petitioner's proposed endeavor is to work as a fitness and wellness coordinator, through which he will "champion societal wellness through fitness and wellness program design and coordination." The Petitioner states that he will provide fitness and weight reduction consultations for clients and will develop specialized training and nutrition programs tailored to his clients' needs. The Petitioner also states that he will consult with other trainers, instructors, and gym owners to broaden the impact of his work. The Petitioner submitted with his personal statement a sample fitness program and nutritional plan. The Petitioner states that he has received interest from fitness studios in hiring him as a fitness and wellness coordinator, including a job offer from one studio and several other emails expressing interest.

In concluding that the Petitioner did not establish the national importance of the proposed endeavor, the Director stated that while the endeavor may increase the mental and physical well-being of the Petitioner's clients, the record did not adequately establish that the endeavor would have an impact at a national level. The Director concluded that the Petitioner did not sufficiently demonstrate that the proposed endeavor offers original innovations that may contribute to the advancement of the industry,

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[2] We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

[3] A two- or three-year program represents attainment of a level of education comparable to two or three years of university study in the United States. *See* https://www.aacrao.org/edge/country/brazil for information regarding the education system in Brazil.

and that without sufficient documentary evidence of its broader impact, the endeavor does not meet the national importance element of the first *Dhanasar* prong.

On appeal, the Petitioner submits a brief in which he asserts that the Director erroneously applied a higher standard of proof and did not consider the totality of the evidence in the record. Specifically, the Petitioner asserts that the Director did not properly consider his personal statement, the sample exercise and nutrition program, the expert opinion letters, and the research articles submitted.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon de novo review we conclude that the Petitioner's personal statement and the sample training and nutrition plan do not establish the national importance of the proposed endeavor. The Petitioner's personal statement describes his educational background, his work experience, and the certifications he has obtained in physical education. The Petitioner also describes his intent to work as a fitness and wellness coordinator and provides a list of the typical duties of this occupation. The statement also discusses initiatives, recommendations, and research from the federal government about the importance of physical fitness and the high cost of a sedentary lifestyle in terms of healthcare costs and premature mortality. These include an initiative led by the Centers for Disease Control and Prevention (CDC) called "Active People, Healthy Nation," and the U.S. Department of Health and Human Services physical activity guidelines.

The Petitioner's sample fitness program is a 9- to 12-week exercise program that includes different recommended activities week by week and provides nutritional guidance. The Petitioner claims that his program "stands to substantially benefit overall societal welfare" and "will decrease U.S. obesity rates, and as a direct consequence . . . substantially provide an economic benefit" to the United States. On appeal, the Petitioner additionally claims that the program is "cutting-edge," that he has "reached a large share of the population," and that he has "developed and implemented innovative approaches" which "set him apart" from others in the field. However, these claims are not supported by the evidence in the record. Neither the personal statement nor the sample program explains what is innovative about the Petitioner's approach, what sets this approach apart from other exercise programs, or how it will impact the field or the population beyond his own clients. The evidence also does not support or quantify the assertion that he has already reached a "large share of the population." The statement and program establish that the proposed endeavor stands to benefit the Petitioner's clients; however, they do not establish that the proposed endeavor stands to have broader implications for the fitness or wellness industry or for the economy.

The Petitioner also asserts on appeal that the two opinion letters submitted in response to the request for evidence (RFE) were not properly considered by the Director. The opinion letters, one from a lecturer in the field of physical education and sports at [redacted] University and the other from an adjunct professor of business, entrepreneurship, and sports management at the [redacted] College, both describe

the growth of the gym and fitness industries and discuss obesity in the United States, the associated negative health outcomes, and the benefits of regular physical activity. However, these claims relate to physical fitness in general and the importance of the fitness and wellness industries overall, rather than the Petitioner's specific endeavor. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. Although the lecturer from [redacted] University claims that the Petitioner "will enable clients to reach their fitness goals" and the adjunct professor from [redacted] College states that the Petitioner's "track record of success proves is he capable of delivering satisfactory results," these claims do not describe a broad impact on the field with implications that extend beyond the Petitioner's own clients. The opinion letters do not discuss how the specific, proposed endeavor may have national or even global implications that would rise to the level of national importance. *Id.* at 889-90.

The Petitioner states that we must afford proper consideration to the letters because expert opinion letters are an important type of evidence in national interest waiver petitions and provide a reliable means of evaluating a petitioner's qualifications and the national importance of their endeavor. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the opinion letters are of little probative value as they primarily repeat the information stated by the Petitioner and conflate the importance and benefits of physical fitness in general with the national importance of the Petitioner's specific endeavor.

Finally, the Petitioner asserts on appeal that the Director did not properly consider the probative research submitted. The record contains articles and research related to the benefits of physical activity, the rising levels of obesity in the United States, and government initiatives related to curbing obesity. However, this evidence again relates to the importance of physical fitness in general and the fitness industry overall. As noted above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. None of the articles discuss the Petitioner's proposed endeavor, its potential impact, and how it may have national importance. *See id.*

We note that, on appeal, the Petitioner asserts that he "submitted approximately four hundred (400) pages of documentation establishing a preponderance of the evidence (more likely than not), which was then summarily dismissed by the officer without providing an accurate analysis." While the Petitioner provided a significant volume of evidence, eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). Accordingly, and for the reasons discussed above, we conclude that the Petitioner has not established the national importance of his proposed endeavor.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

Because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.