U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28808586

Date: NOV. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive/entrepreneur in mining, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 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.*

[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 as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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,[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.

II. ANALYSIS

The Petitioner states that he has more than 30 years of experience in mining, as well as extensive business and entrepreneurial experience, founding and managing a variety of businesses. Describing his proposed endeavor he states, "I intend to continue using my expertise and knowledge to work as an Entrepreneur and contribute to the U.S. economy through business development and consulting activities." The Petitioner states that, through his own business, [redacted] he will "offer management consulting services to other corporations - explicitly those involved in the mining sector. Primarily, [serving] businesses involved in the production of construction aggregates, such as limestone and asphalts."

The Petitioner asserts that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree. With the initial filing the Petitioner submitted evidence of his education and experience, a professional history and personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver, recommendation and support letters, a business plan, and an expert opinion letter. He also submitted industry reports and articles discussing the importance of entrepreneurship and immigration.

A. Member of Professions Holding an Advanced Degree

The Petitioner asserts that he qualifies for advanced degree professional classification by virtue of a foreign education equivalent to a U.S. baccalaureate degree and more than five years of post-baccalaureate experience in the specialty, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). He does not make any claim to qualify as an individual with exceptional ability.

The Director found that the Petitioner qualifies for classification as a professional holding an advanced degree, however, the Director did not explain the basis for this determination. After reviewing the record, we disagree with the Director's determination.

As noted above, a petition for an advanced degree professional must include evidence that a petitioner possesses a "United States academic or professional degree or a foreign equivalent degree above that

[2] *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).

of baccalaureate [or] A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2). In addition, a petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(l), (12).

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 [individual] 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 [individual] 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 [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner submitted his diploma, titled *Bacharel em Direito*, and academic transcripts from [redacted] in Brazil. He also submitted an academic evaluation, demonstrating that he has a foreign equivalent of a U.S. bachelor's degree in law awarded on September 19, 2016. The academic evaluation cites to the Electronic Database for Global Education (EDGE), which is a web-based resource for the evaluation of foreign educational credentials created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[3] USCIS considers EDGE to be a reliable source of information about foreign credentials equivalencies. According to EDGE, the *Bacharel em Direito* represents attainment of a level of education comparable to a bachelor's degree in the United States.

As required by 8 C.F.R. § 204.5(k)(3)(i)(B), the Petitioner must document his post-baccalaureate experience from September 19, 2016. The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The record does not establish that the Petitioner possessed five years of progressive post-baccalaureate experience at the time the petition was filed, on August 12, 2021. The Petitioner's diploma, academic transcripts and an evaluation of his academic credentials state his graduation date as September 19, 2016. Here, the petition was filed less than five years after the Petitioner earned his baccalaureate degree. As the Petitioner did not possess five years of post-baccalaureate experience at the time of filing, the Petitioner has not established that he possessed an advanced degree as required by 8 C.F.R. § 204.5(k)(2).

We note that the Petitioner's academic transcripts state that his "course conclusion" date was July 5, 2016. However, nothing in the record demonstrates that this earlier date represents the date by which the Petitioner satisfied all substantive degree requirements. Instead, the record includes official academic records and an evaluation of the Petitioner's academic credentials all concurring that the Petitioner earned his baccalaureate degree on September 19, 2016.

Even if we considered the course conclusion date as the date the Petitioner earned his baccalaureate degree, which we do not, the record does not establish that he possessed five years of post-baccalaureate experience from the earlier date. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "evidence in the form of letters from current or former employer(s) showing

[3] AACRAO is a nonprofit professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries. *See* http://www.aacrao.org/who-we-are.

that the [petitioner] has at least five years of progressive post-baccalaureate experience in the specialty." The record includes the following letters describing the Petitioner's work experience:

- A letter, dated August 5, 2021, stating that the Petitioner was a "partner/investor of [redacted] from August 16, 2016 to December 2020, as a Law intern."
- A letter, dated July 10, 2021, stating that the Petitioner worked for [redacted] from April 2004 to present and "is currently a Superintendent and Financial Director."
- A letter, dated December 2, 2019, stating that the Petitioner is "attorney in Fact as Superintendent and Financial Director at [redacted] from July 1997 until present date."
- A letter, dated December 5, 2019, stating that the Petitioner was a partner and manager with [redacted] from December 1998 to January 2019.

The four experience letters in the record do not indicate whether the Petitioner's experience was full- or part-time. However, the letters appear to document overlapping experience with four different employers.[4]

Additional inconsistencies further preclude us from determining that the Petitioner possesses five years of post-baccalaureate experience. The Petitioner submitted prior non-immigrant visa applications in 2015 and 2019. In his 2015 application the Petitioner listed his primary occupation as "retired," and listed his previous employment as "Director Comercial" with [redacted] from February 10, 1997 to September 10, 2010. This conflicts with the experience letter claiming the Petitioner's continued employment with [redacted] through at least December 2, 2019. In his 2019 application the Petitioner again listed his primary occupation as "retired." He also listed no previous employment, conflicting with the experience letters describing the Petitioner's employment beyond 2019.

The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In sum, the record does not demonstrate that the Petitioner has at least five years progressive experience following his bachelor's degree as required by 8 C.F.R. § 204.5(k)(2). However, because the Petitioner was not on notice of these issues, this does not form the basis of our dismissal, but the Petitioner must address and resolve the inconsistencies in his employment history and claimed qualifying experience in any further filings.

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[4] Although prior to degree completion, we note that in 2010 the Petitioner was approved for temporary employment in the United States as a multinational executive with [redacted] a business engaged in the development of franchise frozen yogurt stores in the United States. USCIS records demonstrate that the Petitioner worked in the United States with [redacted] from 2010 to 2014. This experience further overlaps with the Petitioner's claimed employment described in the experience letters in the record, casting further doubt on the full-time nature of his experience with each of the claimed employers.

B. Substantial Merit and National Importance

The Director determined that while the Petitioner established that the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance as set forth under the first prong of the *Dhanasar* analytical framework. We agree, for the reasons explained below.

The first 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner's response to the RFE includes additional letters of support and recommendation, additional industry reports and articles, and copies of evidence previously submitted.

After reviewing the Petitioner's RFE response, the Acting Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance. The Acting Director stated that the record did not demonstrate that the Petitioner's business will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in his field of endeavor, going beyond his own business and clients. Additionally, the Acting Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Acting Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law." He further asserts that the Acting Director did not give due regard to all evidence in the record, including his resume, his professional plan, evidence of his work in the field, letters of recommendation, and industry reports and articles. In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

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.

The Petitioner submits articles and industry reports describing the importance of mining in the United States, the value of limestone and other minerals, and the economic role that immigrants play in the U.S. economy.[5] However, the Petitioner does not explain how this demonstrates that his proposed endeavor is of national importance. A 2022 statement from the Deputy Assistant Secretary of Land and Minerals Management of the U.S. Department of the Interior addresses the need for reform of mining laws. However, in describing his proposed endeavor, the Petitioner does not discuss any role he intends to play in legislative reform. A 2022 industry report titled "Mining in the U.S." describes decelerating revenue growth projections, as well as constraints for new companies entering the market. The Petitioner does not explain how this report demonstrates the national importance of his proposed endeavor. Also included in the record is a 2022 article titled "The critical minerals industry desperately needs new engineers." However, the Petitioner does not claim to be an engineer and he does not describe how a shortage of engineers demonstrates the national importance of his proposed endeavor. When 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 "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. Much of the Petitioner's evidence relates to shortage, trends and needs in the field generally, rather than his specific proposed endeavor. Even considering the articles, reports, and statistics collectively and in the totality of circumstances, we still conclude that they do not support a finding that his specific proposed endeavor has national importance.

The Petitioner also submits his professional plan and statement to support the national importance of his proposed endeavor. As noted, to establish national importance, the Petitioner must demonstrate the proposed endeavor's impact. 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.* at 889. Although the Petitioner states that his proposed endeavor "will generate jobs for U.S. workers, as well as create continuous, significant, and profitable opportunities for the national economy," he has not supported these assertions with sufficient independent, objective evidence. The Petitioner's business plan projects that the company's investments will "gradually grow each year, totaling US$806,925.63 of investments in the first five years of operation," allowing the creation of 33 new positions. However, these investments appear to be profits reinvested in the business itself, and the Petitioner does not describe how these investments will contribute to the field broadly. The evidence does not suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's experience will reach beyond benefitting his own company and clients or have broader implications within the field of athletic training. The record does not establish that his proposed endeavor stands to impact the field as a whole.

The Petitioner also submits an expert opinion prepared by [redacted] University, as well as recommendation letters from current and former employers praising the Petitioner's education, experience, past success, personal qualities, and the results he achieved. However, these qualities relate to the second prong of the *Dhanasar* framework, that the individual is well-positioned to advance their proposed endeavor, which "shifts the focus from the proposed endeavor to the foreign

[5] While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

national." *Id.* at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar's* first prong.

We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis [redacted] cites to a 2021 industry report on stone mining in the United States, stating "industry revenue has grown at an annualized rate of 3.1% to $19.8 billion over the five years to 2021." However, as noted above, the 2022 industry report of the same source discusses significant deceleration in the sector revenue growth, with "revenue forecast to decrease an annualized 4.1%." 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 advisory opinion is of little probative value as it does not meaningfully address the details of the Petitioner's proposed endeavor and why it would have national importance. [redacted] does not elaborate on how the Petitioner's proposed endeavor will have a prospective impact on the United States, including the national or global implications on mining operations, the potential to employ U.S. workers, or the positive economic effects.

On appeal, the Petitioner relies upon the evidence he previously submitted and asserts that the Acting Director imposed a "stricter standard, and erroneously applied the law," and did not consider the evidence objectively. The Petitioner does not identify the Acting Director's standard or erroneous applications of law. While we acknowledge the Petitioner's appellate claims that the Acting Director did not duly consider certain pieces of evidence, we note that the decision discusses each of the claimed pieces of evidence the Petitioner's lists in his brief. Nevertheless, we address them again herein. The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the trends in mining. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs.[6] *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).

[6] In her decision the Acting Director concludes that "the Petitioner has established that [he] is well positioned to advance the proposed endeavor" without providing an analysis. Although, we disagree based on the deficiencies noted in the claimed experience outlined above, because we conclude that the Petitioner has not established his proposed endeavor is of national importance, this is dispositive of the appeal, and it is unnecessary to analyze any remaining issues.

III. CONCLUSION

As the record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree, or that he has met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner is not eligible for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.