U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28802834

Date: OCT. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an occupational health and safety technician and entrepreneur, 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). 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 Texas Service Center denied the petition. The Director concluded that the record did not demonstrate the Petitioner 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.[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.

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. While neither the statute nor the pertinent regulations define the

[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.

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 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 proposes to establish an occupational health and workplace safety services business in the United States having previously worked as an occupational safety engineer in Brazil.

A. Member of Professions Holding an Advanced Degree

The Director did not make a determination as to the Petitioner's eligibility for the EB-2 immigrant classification. For the reasons discussed below, the Petitioner has not established his eligibility for the underlying EB-2 classification.

The Petitioner submitted evidence to qualify as a member of the professions holding an advanced degree. The record does not establish that the Petitioner has at least a U.S. bachelor's degree or a foreign equivalent degree. The Petitioner earned a title of engineer from Universidade [redacted] in Brazil on March 25, 1987; completed the specialization course in quality and productivity – CEQP at Universidade [redacted] on October 24, 2000; and completed the graduate specialization course in occupational safety engineering at [redacted] on January 26, 2008. He also submitted evidence of his employment as an occupational safety engineer in Brazil. The Petitioner submitted copies of his diploma and specialized course certificates, the respective academic transcripts, work experience letters, and an academic evaluation from GEO Credential Services dated October 6, 2021. The academic evaluation states that having reviewed the Petitioner's diploma, certificates, and respective transcripts, "[the Petitioner] has no less than the equivalent of a U.S. Bachelor's degree in Mechanical Engineering." The evaluation further states:

> This assessment is based on placement guidelines set out in various publications created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) as to foreign education credentials required for admission to American universities, including the EDGE database . . . . EDGE specifically lists the Bacherel/Titulo degree of four to five years duration to represent attainment of a level of education comparable to a Bachelor's degree in the United States.

The Petitioner's academic transcripts indicate his title of engineer (titulo de engenheiro) was completed after three years of study from 1992 to 1994, and not the four to five years duration listed in the academic opinion as representing attainment of the foreign equivalent of a U.S. bachelor's degree. The plain language of the regulations indicates that an advanced degree equivalency must include a single bachelor's degree, without substituting experience for education or combining lesser

[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).

educational credentials. The regulations require five years of progressive experience to follow "[a] United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(2).[3] Here, the evaluation combining the Petitioner's educational credentials, his title of engineering and his specialized certificates, does not qualify under the regulations as demonstrating the foreign equivalent of a single U.S. bachelor's degree.

Since 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

The Director determined that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director further found that the Petitioner established he is well positioned to advance the proposed endeavor under the second prong of Dhanasar; however, he did not show that on balance, waiving the job offer requirement would benefit the United States under the third prong of Dhanasar.[4] Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[5]

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 establish an occupational health and workplace safety services business for which he would be its managing partner and security engineer. The business plan states that the business would be owned by the Petitioner and two other individuals with its headquarters in Massachusetts and two future offices in California and Texas. The business would focus on work safety audit, consultancy to improve occupational safety, training in safe project implementation, and

[3] When introducing the EB-2 regulations, the former Immigration and Naturalization Service (INS) explained that "the proposed rule does not provide a procedure to allow experience alone to substitute for either a baccalaureate degree or an advanced degree." Proposed Rule on Employment-Based Petitions, 56 Fed. Reg. 30703, 30706 (July 15, 1991). In response to stakeholder input, the INS reviewed the Immigration Act of 1990 and found the proposed regulations consistent with Congressional intent. The INS stated, "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, an *alien must have at least a bachelor's degree*." INS Final Rule on Employment-Based Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added). Thus, an advanced degree professional must have at least a U.S. bachelor's degree or a single foreign degree equivalent.

[4] The Director did not provide an analysis as to the findings under the second and third prongs of the Dhanasar framework.

[5] While we may not discuss every document submitted, we have reviewed and considered each one.

ergonomic analysis of the work environment for small and medium-sized companies. We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that his proposed endeavor "may potentially extend beyond his business and its clients to impact the field more broadly . . . to the level of national importance." Therefore, the Director found that the Petitioner did not meet his burden in meeting the national importance element of the first prong of the Dhanasar framework.

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erred by not giving "due regard" to the evidence submitted, specifically the Petitioner's resume outlining his experience; his business plan describing his accomplishments and the business' potential benefits; letters of recommendation attesting to his work in the field; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals in the field. Upon de novo review, we find the Petitioner did not demonstrate that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

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, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

On appeal, the Petitioner argues that his proposed endeavor has national importance, particularly because it will "generate substantial ripple effects upon key occupational activities on behalf of the United States" and would be "a vital aspect of U.S. health and safety operations and productivity, [sic] which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy." (emphasis omitted). The Petitioner stresses his more than 26 years "of progressive experience and acumen in the health and safety field" and his educational credentials to argue that his "work offers broad implications to the United States' occupational health and safety industry, specifically through his endeavors within key commercial segments." (emphasis omitted). The Petitioner argues his proposed endeavor will benefit the United States "by creating jobs and economic stability." He relies on his background to emphasize that he "has brought numerous advantages to the organizations that he has served . . ." by stimulating "his served companies' economic capacities" and prioritizing "customer satisfaction by ensuring all clients are aligned with their actual needs, furthering customer loyalty." The Petitioner argues the United States "would benefit from investing in well-versed occupational health and safety professionals such as [the Petitioner], who are knowledgeable regarding potentially profitable markets for U.S. environmentally friendly organizations in regions that are economically and politically strategic, yet extremely complex." (emphasis omitted). He contends his "proposed endeavor will have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation, and contributing to a streamlined economic landscape." The Petitioner asserts his "proposed endeavor is clearly of national importance, when

considering how much a professional with his caliber can contribute to the national interests, and to the U.S. economy, regardless of a labor certification." (emphasis in original).

However, the Petitioner's reliance on his academic credentials, professional experience, and achievements to establish the national importance of his proposed endeavor is misplaced. His academic credentials, professional experience, and achievements 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. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar 's first prong. 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. See id. at 889.

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. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of occupational health and workplace safety, 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 the Petitioner's business would impact the occupational health and workplace safety field more broadly.

With the petition, the Petitioner submitted his statement and a business plan contending his proposed endeavor has national importance based on potential economic benefits. The Petitioner claims that his proposed endeavor would create jobs for U.S. workers in underserved areas, increase revenue to the U.S. and local economies, and generate taxes for the United States and local communities. The business plan briefly states that it proposes to establish the business in underutilized business zones of [redacted] Massachusetts; [redacted] California; and [redacted] Texas, claiming this will generate jobs for U.S. workers in these underutilized areas and will help economic growth in the regions. However, the Petitioner has not provided corroborating evidence to support his claims that his business' activities stand to provide substantial economic benefits to the United States and to underserved areas of Massachusetts, California, and Texas.

The business plan projects that in five years the business will hire 26 employees and will generate revenue of over 7.3 million dollars. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner's claims that his occupational health and workplace safety business will benefit the U.S. and local economies has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide economic benefits to the United States or local communities. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 26 jobs and generating revenue of over 7.3 million dollars over a five-year period rises to the level of national importance.

The Petitioner's statement and business plan mainly describe his academic credentials and professional experience; the ownership of the business and its initial source of capital; services offered;

an analysis of the expected growth of the occupational health and workplace safety services industry; and the business' projected marketing, staffing, and finances. However, it does not sufficiently document the potential prospective impact, including the asserted economic benefits to the United States. Also, without sufficient documentary evidence that his proposed job duties as the managing partner and security engineer for his business would impact the occupational health and workplace safety industry more broadly, rather than benefiting his business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner further claims on appeal that the national importance of his proposed endeavor is evidenced in industry reports and articles. The reports and articles relate to the economic benefits of immigrants and entrepreneurship; occupational health and workplace safety services; projected employment in the science and engineering fields; foreign-born workers in the science, technology, engineering, and math (STEM) fields; benefits of qualified immigrants in the STEM field; labor shortages in the engineering and manufacturing industries; economic benefits of the engineering industry; the history and future of operational innovation; operations management; importance of international companies; fostering global competence; and the benefits of foreign direct investment and international investment. We recognize the importance of the occupational health and workplace safety industry and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the occupational health and workplace safety services field or starting an occupational health and workplace safety services business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889.

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 industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

To further support the national importance of his proposed endeavor, the record includes an opinion from [redacted] adjunct professor of mathematics at [redacted] College of New York. To show the proposed endeavor has national importance, the opinion emphasizes that the Petitioner's experience would help U.S. businesses "improve business operations and boost safety in the workplace and employees' health and well-being, thereby promoting social welfare and resulting in more productive and revenue-generating workforce." The opinion explains the importance of the occupational health and safety industry to the profitability and operations of various businesses and how the occupational health and safety industry supports national initiatives related to the COVID-19 pandemic. Instead of focusing on the Petitioner's specific proposed endeavor having a prospective impact in the occupational health and safety field, the opinion focuses on the importance of the industry and how the Petitioner's experience as an occupational safety engineer would be economically and socially beneficial to the Petitioner's business' client companies and their employees. 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). Stating that the Petitioner's work would support an important industry is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, he has not demonstrated that the work he proposes to undertake as the owner and general manager of his proposed civil engineering consulting business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business' civil engineering consulting work and the claimed economic results.

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 eligibility and appellate arguments under the second and third prongs. 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

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility 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.