U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 28048385

Date: SEP. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical and automation engineer, seeks classification as a member of the professions holding an advanced degree. 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. 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner's endeavor would have national importance, that the Petitioner is well-positioned to advance that endeavor, or that, on balance, it would benefit the United States to waive the job offer requirement. 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. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

## II. ANALYSIS

### A. National Importance

The Petitioner, an electrical engineer who is currently employed in the United States as a fire alarm systems estimator, seeks to work as an automation and electrical engineer in the petroleum industry. The Director found that the Petitioner qualifies as an advanced degree professional, but does not meet any of the prongs of the *Dhanasar* test. On appeal, the Petitioner submits a brief contending that the Director used incorrect evidentiary standards and misinterpreted *Dhanasar*, as well as evidence regarding Dr. Dhanasar, the plaintiff in that case. Upon review, we do not find the Petitioner's claims persuasive.

In deciding *Dhanasar*, we vacated *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998) (*NYSDOT*), the case that set forth the former framework for adjudicating national interest waiver petitions. This older framework required, in part, that petitioners show that their endeavor's "proposed benefit will be national in scope," since "eligibility is not established solely by a showing that a beneficiary's field of endeavor has intrinsic merit." *Id.* at 217. On appeal, the Petitioner states that the Director misapplied the law because the national importance of his endeavor exceeds that of the noncitizen in *NYSDOT*. However, as this petition was filed subsequent to *Dhanasar*, the Petitioner must establish eligibility for a national interest waiver under the framework set forth in that decision. Therefore, the Petitioner's reliance on *NYSDOT* is misplaced and we will adjudicate this matter using the three prongs of the *Dhanasar* test.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar* found that the *NYSDOT* "national in scope" standard was occasionally "construed too narrowly by focusing primarily on the geographic impact" of the endeavor's benefits and therefore replaced it with the requirement that an endeavor have "national importance." *Matter of Dhanasar*, 26 I&N Dec. at 887, 889-90. In determining whether a proposed endeavor has national importance, we consider its potential impact. An endeavor may meet this requirement if, for example, it has national implications within a particular field, such as those resulting from improved manufacturing processes or medical advances, or if it has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 889-90.

In the present case, the Director used the *Dhanasar* test and found that while the Petitioner's endeavor has substantial merit, the evidence did not establish that it would have an impact rising to the level of national importance. On appeal, the Petitioner states that the Director misapplied the law because the national importance of his endeavor exceeds that of the noncitizen in *Dhanasar*. The Petitioner further contends that the Director erred by requiring a showing of the potential impact of the Petitioner's endeavor, stating that *Dhanasar* "never once . . . mentions where Mr. Dhanasar works, or his level of impact" and instead "exclusively focuses on whether the specific field of endeavor is of importance to 'U.S. advances in the field'" (emphasis removed).[1] Finally, the Petitioner contends that national

[1] *Contra Matter of Dhanasar*, 26 I&N Dec. at 891 ("The petitioner proposes to engage in research and development relating

interest waiver petitions should be adjudicated using "a 'one-to-one' comparison using the actual and publicly available evidence of Mr. Dhanasar's real-world expertise and real-world evidence of Mr. Dhanasar's impact . . ." and provides documentation which he states establishes that Dr. Dhanasar's impact is less than his own.

First, regarding the Petitioner's proposed comparison to Dr. Dhanasar, the Petitioner cites no legal authority for a one-to-one comparison of two petitioners operating in different fields with different proposed endeavors. As noted by the Director in his denial decision, *Dhanasar* establishes an analytical framework to examine national interest waiver cases, but it does not indicate that a side-by-side comparison of individual petitioners and endeavors is required. Here, the Petitioner misunderstands the nature of precedent decisions when he asserts that approvals are required for any petitioner with more impact than Dr. Dhanasar.

Further, we decline to adopt the Petitioner's reading of *Dhanasar* as only requiring a showing that a petitioner's field or occupation is nationally important. *Dhanasar* specifically states: "In determining whether the proposed endeavor has national importance, we consider its potential impact." *Matter of Dhanasar*, 27 I&N Dec. at 889-90. If the importance of an endeavor's field was sufficient, in and of itself, to establish that the endeavor has national importance, there would be no need to articulate "substantial merit" and "national importance" as two separate components of the first prong of the *Dhanasar* test. As specifically noted in *Dhanasar*, an endeavor such as classroom teaching may be part of an important field with substantial merit without having enough of an impact on that field to be nationally important. *Id.* at 893. The Petitioner has not provided sufficient justification for his reading of *Dhanasar*, and as such we will evaluate his endeavor's national importance based on the specific nature of that endeavor and the impacts that will be attributable to it, rather than simply the field the endeavor is in.

The Petitioner's initial cover letter stated that he "seeks employment in the field of Electrical and Automation Engineering in the Oil & Gas Sector."[2] In response to the Director's request for more specific information about his endeavor, the Petitioner submitted a letter "to clarify that [his] proposed endeavor is to continue working in the field of electrical and automation engineering," accompanied by documentation regarding his current employment as a fire alarm systems estimator.[3] The appellate brief emphasizes that the Petitioner's prospective impact would be greater than that of Dr. Dhanasar because he works in the private sector and in the nationally important field of petroleum energy. However, the unsubstantiated assertions of counsel do not constitute evidence. *See, e.g.*, *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Further, as previously noted, a one-to-one comparison of two petitioners operating in different fields with different proposed endeavors is not required here.

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to air and space propulsion systems, as well as to teach aerospace engineering, at [redacted] Agricultural and Technical State University . . ."), *id.* at 893 (noting that Dr. Dhanasar's classroom teaching activities were not nationally important because they did not impact the broader field of STEM education).

[2] While this letter alludes to the Petitioner performing research activities, there is no indication that he has ever been a researcher or that he will be one in the United States.

[3] There is no indication that this work relates to the petroleum energy field.

The statements made in the appellate brief regarding the endeavor's national importance are not supported by the evidence of record. The brief contends that the Petitioner "submitted probative expert letters from individuals holding senior positions throughout his industry describing the importance of [Petitioner's] expertise in engineering." The referenced letters do not corroborate this statement.[4] For example, the support letter from R-R-S-J- states that the Petitioner is a "remarkable engineer who has already influenced other engineering professionals around the world," but provides no examples of which professionals he has influenced or how. This letter does not establish what impact the Petitioner proposes to have on his field. While we acknowledge the letters' praise of the Petitioner's abilities, this relates to the second prong of the *Dhanasar* test, which concerns whether he is well-positioned to advance his proposed endeavor. It does not relate to that endeavor's national importance.

Furthermore, none of the letters address the Petitioner's potential U.S. endeavor except in the most general terms. Simply stating that a Petitioner will have a nationally important impact without articulating or documenting that impact does not meet the burden of proof in these proceedings. *See Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)) (stating that the preponderance of the evidence standard requires examining each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true). We acknowledge the record's many examples of the Petitioner's past work product, such as sales presentations and technical offers. However, the record does not document how these relate to any specific prospective impact of the Petitioner's endeavor in the United States, apart from the impact of the energy industry in general.

In sum, the petition indicates that the Petitioner will work as an electrical and automation engineer in the petroleum industry without documenting what kind of work, specifically, he will undertake. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual (stating that an endeavor is more specific than a general occupation and petitioners should explain their specific projects and goals or what areas they will work in rather than simply stating the typical duties of their occupations). The Petitioner has the evidentiary burden of establishing what that endeavor will be and how it will have national importance. Here, he has not provided sufficient information about the endeavor to establish what scientific, economic, or other benefits would be attributable to it.[5]

The record does not establish that the Petitioner's endeavor would have national implications in his field, have a substantial economic benefit, or otherwise benefit the United States on a level that rises to national importance. Therefore, he has not established his eligibility under the first prong of the *Dhanasar* test. Because this issue is dispositive, we need not address his eligibility under the other two prongs and hereby reserve those issues. *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

[4] While we will not address the contents of each letter individually, we have read and analyzed each one.

[5] This concern also applies to the Petitioner's contention that he qualifies for a national interest waiver because he works in a Science, Technology, Engineering, or Mathematics (STEM) field. The specific STEM evidentiary considerations mentioned by the Petitioner are only applicable where the endeavor concerns critical and emerging technologies or other STEM areas important to U.S. competitiveness and national security. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(2). There is insufficient information in the record to establish that the Petitioner's endeavor implicates these nationally important areas. Furthermore, working in a STEM field does not exempt petitioners from establishing the national importance of their endeavors. *Id.*

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 did not otherwise meet their burden of proof). The Petitioner has not established his eligibility for a national interest waiver.

B. Advanced Degree Professional

Beyond the decision of the Director, the Petitioner has not established his qualifications as an EB-2 advanced degree professional. An advanced degree professional petition must include documentation establishing that the noncitizen either has a qualifying advanced degree or has a U.S. baccalaureate degree or foreign equivalent degree and at least five years of progressive post-baccalaureate experience in his specialty. 8 C.F.R. § 204.5(k)(3)(i).

The Petitioner does not claim, and the record does not indicate, that he holds an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). As such, in order to qualify for the advanced degree professional classification, he must establish that he has a qualifying baccalaureate degree as well as five years of progressive work experience in his specialty. The record indicates that the Petitioner's foreign baccalaureate degree is equivalent to a U.S. baccalaureate degree in electrical engineering. However, the Petitioner did not submit the evidence required to establish his five years of qualifying work experience.

Qualifying work experience must be documented using letters from employers which include the name, address, and title of the writer, as well as a specific description of the duties performed by the noncitizen. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable,[6] other documentation relating to the noncitizen's work experience will be considered. *Id.* In this instance, the Petitioner provided a work experience evaluation and letters regarding the following employment:

- [redacted] – 1997 to 2003;
- [redacted] – 2012-2015;
- [redacted] – July 2015 to May 2019; and
- [redacted] – January 3, 2021, to September 23, 2022 (letter date).

The letters from [redacted] do not include the job titles of the writers, as required by regulation. Similarly, the letter from [redacted] does not include the writer's address, and only states his former job title as "(Ex) Venezuela Account Manager". Finally, the letter from [redacted] concerns employment that the Petitioner entered into after the petition filing date of July 2020. Eligibility must be established as of the time of filing. 8 C.F.R. § 103.2(b)(1). Therefore, any work experience gained after the filing date cannot be counted towards the Petitioner's eligibility for the advanced degree professional criterion.

The employment letters provided do not meet the requirements of 8 C.F.R. §204.5(g)(1). As such, the Petitioner has not documented his five years of progressive post-baccalaureate work experience in his profession, and he does not qualify as an advanced degree professional. In any future filing in this matter, the Petitioner should address this issue and submit appropriate documentation under 8 C.F.R. § 204.5(g)(l) to demonstrate his qualifying work experience.

[6] There is no indication that such evidence is unavailable in this case.

## III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. He therefore has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. Furthermore, we withdraw the Director's finding that the Petitioner is qualified for the EB-2 advanced degree professional classification.

**ORDER:** The appeal is dismissed.