U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28467018

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the international trade field, requests his classification under the employment-based, second-preference (EB-2) immigrant visa category as a noncitizen of "exceptional ability" and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job-offer - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if he establishes that a waiver would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the requested immigrant visa category as a noncitizen of exceptional ability. The Director also found that his proposed endeavor has "substantial merit" and that he is "well-positioned" to advance it. But the Director concluded that the Petitioner did not establish the undertaking's "national importance" or that a waiver of U.S.-worker protections in his case would, on balance, benefit the United States. On appeal, the Petitioner claims that the Director overlooked evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the Petitioner did not establish the claimed national importance of his proposed undertaking. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must demonstrate their qualifications for the requested EB-2 immigrant visa category, either as members of the professions holding "advanced degrees" or as noncitizens of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category generally requires prospective U.S. employers to seek noncitizens' services and obtain DOL certifications to permanently employ them in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term national interest. So, we have established a framework for adjudicating these waiver requests. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

The Petitioner, a native and citizen of Brazil, claims about 20 years of experience in international trade. For the past 13 years, he has operated his own "cargo-broker" consulting companies, connecting cargo owners to carriers, establishing trade networks between companies and suppliers, and providing clients with access to global markets. In 2019, he established his own firm in the United States. The Petitioner seeks to expand his U.S. consulting business to help entrepreneurs and U.S. small- and medium-sized businesses "go global."

A. Substantial Merit

A proposed endeavor may have substantial merit if it "has the potential to create a significant economic impact" or if it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The record indicates that the Petitioner's consulting business could provide substantial economic benefits, including helping U.S. businesses hire more workers. We therefore agree with the Director that the Petitioner's proposed undertaking has substantial merit.

B. National Importance

In assessing whether a proposed endeavor has national importance, we must consider its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. An undertaking that has national or global implications within a specific field - "such as those resulting from certain improved manufacturing processes or medical advances" - may have national importance. *Id.* But even ventures focusing on one U.S. geographic area may meet this criterion. *Id.* For example, "[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, . . . may well be understood to have national importance." *Id.* at 890.

The Director found insufficient evidence that the Petitioner's endeavor would create substantial economic benefits beyond itself and its clients. The Director also found that the record lacks evidence that his undertaking would have national or global implications within the international trade field.

On appeal, the Petitioner contends that his business plan demonstrates the national importance of his proposed undertaking. The plan states that his U.S. company is "dedicated to helping both importers

and exporters locate sought after products, leveraging products and services, *in order to access new foreign markets . . . We connect clients with markets all over the world.*" (emphasis in original). Also, the plan describes his company as a "*full-service international cargo-broker consulting company* dedicated to helping *entrepreneurs, small, and medium U.S. businesses go global.*" (emphasis in original). By helping U.S. businesses enter new foreign markets, he argues that his endeavor will not only benefit his company and its clients, but also the U.S. economy.

The Petitioner further contends that his business will help reduce carbon emissions because many of the company's clients distribute bicycles, electric bicycles, and electric and gas vehicles. He notes that reducing carbon emissions is "a top priority" of the U.S. government.

We agree that helping U.S. businesses enter new markets and supporting the "sustainability mobility sector" are meritorious. But, contrary to the analysis in *Dhanasar*, the Petitioner has not demonstrated that his *specific* endeavor would have national implications for the economy or the field of international trade. *See Matter of Dhanasar,* 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake.") He projects that, within five years, his business will generate revenues of more than $2.3 million and employ 17 people. But he has not demonstrated the national significance of those projected levels.

The Petitioner also claims that, within five years, his business will generate 255 indirect jobs with clients, their suppliers, and other companies. But the Petitioner's estimated number of indirect jobs conflicts with other evidence. He submitted an expert opinion letter from a U.S. professor of business management stating that the creation of one direct job leads to an average of *2.5* additional, indirect jobs. Without explanation, the Petitioner claims that each direct job it creates will lead to *15* additional, indirect jobs. A petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Thus, we do not find the projected number of indirect jobs that the Petitioner's endeavor would create to be credible.

For the foregoing reasons, the Petitioner has not demonstrated that his proposed endeavor has national importance. We will therefore affirm the petition's denial.

C. Exceptional Ability

Also, contrary to the Director's finding, the Petitioner has not demonstrated his qualifications for the requested immigrant visa category as a noncitizen of exceptional ability. While the Director found that he met at least three of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), he did not establish that he has "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." *See* 8 C.F.R. § 204.5(k)(2) (defining the term "exceptional ability in the sciences, arts, or business"). Under USCIS policy, "[m]eeting the minimum requirement by providing at least three types of initial evidence does not, in itself, establish that the beneficiary in fact meets the requirements for exceptional ability classification." 6 *USCIS Policy Manual* F.(5)(B)(2), https://www.uscis.gov/policy-manual. "Officers must also consider the quality of the evidence." *Id.*

1. "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." 8 C.F.R. § 204.5(k)(3)(ii)(A).

To meet this evidentiary requirement for classification as a noncitizen of exceptional ability, the Petitioner submitted a copy of an academic record from a Brazilian university indicating that, from 2000 to 2003, he took courses toward a degree in foreign trade administration. But the document does not indicate his completion of the requisite number of credits to obtain a degree. The Petitioner also provided a 2005 certificate from a commercial Brazilian course and training provider. The document indicates his attendance at a three-day marketing course.

The record does not indicate that the Petitioner has a degree in his field or has otherwise acquired significant expertise in international trade through education. Thus, the documentation does not demonstrate that the Petitioner's academic record exceeds those ordinarily encountered in his field.

2. "Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought." 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Petitioner submitted two letters under this requirement. He, himself, signed one of the documents, regarding his U.S. employment since 2019. As a party in these proceedings, however, the Petitioner may be biased in his own favor. Thus, his self-signed letter, in the absence of other independent objective evidence, lacks credibility regarding his duties with his company. *See* 8 C.F.R. § 103.2(b)(2)(i) (requiring affidavits in lieu of unavailable, required evidence from "persons who are not parties to the petition").

A bank manager signed the other letter regarding the Petitioner's employment by his Brazilian company from 2010 to 2019. The record, however, does not demonstrate that the Petitioner's company employed the bank manager or that she had personal knowledge of the Petitioner's duties at his firm. Also, the letter states that the Petitioner "[n]egotiated import and distribution exclusivity agreements" and focused on "Import and Export with long Know-How and expertise in Trade Area." But a copy of the company's Brazilian business registration describes the company as a bicycle wholesaler and retailer, suggesting that the Petitioner focused more on local sales than international trade. Thus, he has not resolved all inconsistencies regarding claimed experience in international trade. *See Matter of Ho*, 19 I&N Dec. at 591.

3. "Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability." 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner submitted copies of his U.S. income tax return for 2020, indicating his receipt of $88,189 in income from his U.S. business. But evidence submitted with his prior, unsuccessful self-petition indicates that he previously made less money. A copy of his U.S. income tax return for 2019 indicates that he made only $6,136 from his U.S. business in its first year of operation. Also, a letter from a Brazilian accountant states that the Petitioner received annual income equating to the following U.S. amounts: $60,188.09 in 2017; $22,988.51 in 2016; and $78,078.08 in 2015. Thus, the Petitioner

has an uneven income history, and the record does not demonstrate that his remuneration exceeds those of other international trade consultants.

4. "Evidence of membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner submitted a letter from the [redacted] which he purportedly joined in June 2018. As the Beneficiary himself lacks a post-secondary degree, the record does not demonstrate that the organization's members are professional. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "profession" as including architects, engineers, lawyers, physicians, surgeons, and teachers by reference to section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), and any other occupation that requires a bachelor's degree for entry). Also, the record shows that the letter's signatory is the owner of one of the Petitioner's Brazilian clients. Thus, because of potential bias in the Petitioner's favor, the membership letter may not be credible. *See Matter of Chin*, 14 I&N Dec. 150, 152 (BIA 1972) (stating that, to be probative, a document must generally include the nature of an affiant's relationship, if any, to the affected party).

5. "Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." 8 C.F.R. § 204.5(k)(3)(ii)(F).

To claim he meets this criterion, the Petitioner submitted letters from clients. The letters describe the clients' relationships with the Petitioner and his skills. But the letters do not establish his achievements or significant contributions in the international trade field. One client stated that the Petitioner helped them obtain a new supplier when their prior provider temporarily shut down during the beginning of the COVID-19 pandemic. But the record lacks sufficient details to demonstrate that the Petitioner's help constituted a significant achievement or contribution in the field. In sum, based on the quality of the Petitioner's evidence, he has not demonstrated his possession of "a degree of expertise significantly above that ordinarily encountered in the science, arts, or business." *See* 8 C.F.R. § 204.5(k)(2) (defining the term "exceptional ability").

The Director did not inform the Petitioner of this evidentiary deficiency. Thus, in any future filings in this matter, he must submit additional evidence of his claimed exceptional ability in the international trade field.

Our conclusion that the Petitioner has not demonstrated the purported national importance of his proposed endeavor resolves this appeal. We therefore decline to reach and hereby reserve the Petitioner's appellate arguments regarding the purported benefits to the United States of waiving U.S.-worker protections. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant was otherwise ineligible for relief).

ORDER: The appeal is dismissed.