



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26379575

Date: APR. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a private security specialist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 Director of the Texas Service Center denied the petition, concluding the record did not establish the Petitioner's eligibility for a national interest waiver under the Dhanasar framework. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² We will then conduct a final merits determination to decide whether the evidence in its totality shows

¹ If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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 discretion³, 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

A. Evidentiary Criteria for Exceptional Ability

Although the Director concluded the Petitioner meets three of the evidentiary criteria, we withdraw that finding and conclude the Petitioner meets only one of the required criteria.⁴ While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

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)

The Petitioner has not provided any official academic record. Therefore, we withdraw the Director’s finding that this criterion has been met. The record does not establish the Petitioner’s eligibility under this criterion.

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 provided letters delineating his duties in various prior employment positions across at least ten years. Accordingly, the Petitioner has established he meets this criterion.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

The Petitioner provided numerous training certificates, such as those for escort training, computer security use, and personal defense. Although some employers may prefer individuals with a specific kind of

³ 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).

⁴ The Petitioner has not asserted that he qualifies as a member of the professions holding an advanced degree.

training experience or level, this does not demonstrate that a private security specialist requires a license to perform the occupation or a certification for the occupation overall. The Petitioner's certificates suggest he completed training on various topics related to security; however, the certificates are not certifications for the occupation. Here, the Petitioner appears to confuse the term "certificate" with "certification." Although the Petitioner has numerous certificates, this evidence does not support a finding that he has a license or other certification to work as a private security specialist. Therefore, we withdraw the Director's finding that the Petitioner satisfied this criterion and instead conclude the evidence does not establish the Petitioner's eligibility under this criterion.

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 Director concluded, "the submitted evidence does not establish that the petitioner has commanded a salary, or other remuneration for services, which demonstrates exceptional ability." We agree. In addition, the Petitioner does not contest the Director's finding concerning this criterion and therefore does not overcome it.

The Petitioner provided a contract settlement voucher, an invoice, and what appears to be a paystub. Although the Director stated in the decision that the Petitioner provided "comparable salary information," we withdraw that finding and conclude the record does not contain documentation comparing the salaries of private security specialists. The record contains little indication that the Petitioner earned a salary, or other remuneration for services, which demonstrates exceptional ability. For the foregoing reasons, the Petitioner has not established eligibility under this criterion.

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

The Petitioner did not provide evidence for consideration under this criterion. Therefore, the record does not support a finding that he satisfies this criterion.

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)

The Director determined the Petitioner had established eligibility under this criterion. However, the Director did not provide any analysis to support this conclusion. Upon de novo review, we conclude the evidence is insufficient to demonstrate the Petitioner has been recognized by peers, government entities, or professional or business organizations for achievements and significant contributions to the industry or field. We reviewed the Petitioner's statement, his résumé, and the letters from former employers and coworkers commending the Petitioner's work. This evidence does not include specific details explaining how the Petitioner's work contributed to the industry or field as a whole. Although the Petitioner's work benefitted his employers, their clients, and specific mission objectives, the recognition he received for performing his job duties is insufficient to establish that he received recognition for achievements and significant contributions to the industry or field. Accordingly, we conclude the Petitioner has not established eligibility under this criterion.

Summary of Exceptional Ability Determination

The record does not support the Director's finding that the Petitioner met at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Rather, we conclude the evidence supports a finding of eligibility under only one criterion. Therefore, the Petitioner has not established his eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As the Petitioner has satisfied only one criterion, a final merits determination is not required. Nevertheless, we conclude the record does not establish the Petitioner's experience is beyond that which is ordinarily encountered in the occupation.

Demonstrating eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability is a threshold requirement for a national interest waiver. As the Petitioner has not established his eligibility for the underlying EB-2 classification, he is not eligible for a national interest waiver. However, as the Director determined the Petitioner had not established eligibility for a national interest waiver under the Dhanasar framework, we provide additional analysis of this issue.

B. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor 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. Dhanasar, 26 I&N Dec. at 889.

The Petitioner initially stated he will provide "services, consultancy, and training in private security projects for logistics operations, personnel, and assets protection." In response to the Director's request for evidence (RFE), he clarified that his proposed endeavor is to work as either a security personnel consultant for schools or as a trainer of qualified security personnel. The scope of his endeavor involves "creating, implementing, and monitoring emergency preparedness programs in an attempt to mitigate the threats of domestic terrorist attacks in schools." We conclude the Petitioner's proposed endeavor has substantial merit.

Regarding national importance, the Petitioner provided information concerning the broad applicability of private security services, such as in the areas of personal, school, corporate, property, and asset security. He provided federal budget and industry statistics, as well as articles and memoranda specifically addressing school security and safety. However, in 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." Id. 889. While we agree that the industry of private security services is important, this is not necessarily sufficient to establish the national importance of the proposed endeavor.

The Petitioner has not provided sufficient information concerning the impact of his specific endeavor. For instance, he has not provided information on how many schools or students will receive his services or how his services differ from the security services already available. In Dhanasar, we determined 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. Likewise, we conclude that the

Petitioner has not offered sufficient evidence of how his proposed endeavor would impact the field more broadly. To illustrate further, the Petitioner has not provided information on the economic impact of his proposed endeavor, if any. For instance, the record does not show his endeavor will create jobs or generate tax revenue. As such, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. While the Petitioner's private security services stand to impact those who employ him, the record does not demonstrate how his endeavor would impact the field of security more broadly or the nation as a whole.

On appeal, the Petitioner relies on arguments and evidence already provided. He further emphasizes the merits of his services, as well as his past experience and success. While we acknowledge the Petitioner's valuable experience, his expertise acquired through his employment relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor has national importance under *Dhanasar's* first prong. We conclude the Petitioner has not provided sufficient evidence of his proposed endeavor's impact nor has he explained how it would operate on a scale rising to the level of national importance.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not established he qualifies for the underlying EB-2 classification as an individual of exceptional ability or an advanced degree professional, nor has he met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

ORDER: The appeal is dismissed.