U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23073543

Date: APR. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an 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).

The Director of the Texas Service Center denied the petition, concluding that although the record established the Petitioner's eligibility for the EB-2 classification, it did not show that he qualified for, or otherwise merited, a national interest waiver. 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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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[1], grant a national interest waiver if the petitioner demonstrates that:

[1] *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).

- 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. ADVANCED DEGREE PROFESSIONAL

The Director concluded in his decision that the Petitioner is eligible as a member of the professions holding an advanced degree. However, after review of the record, we disagree. The evidence includes a translated copy of the Petitioner's diploma from [redacted] University [redacted] dated February 18, 2008, which states that he "completed a full course" in finance and credit was granted the qualification of "economist." It also indicates that he was admitted to [redacted] in 2001, but the record does not include official academic transcripts from the university showing semesters attended or credits earned by the Petitioner.

A U.S. bachelor's degree usually requires four years of university studies. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977). Here, the diploma indicates that the Petitioner completed his studies over seven years, but he does not claim, nor does the evidence support, that he earned an advanced degree.[2] Although the Petitioner indicates that he began working part-time during the course of his studies in 2006, he does not explain how this affected his education, or offer any documentary evidence to corroborate this statement. The evidence is therefore insufficient to establish that over the course of seven years, the Petitioner completed coursework equivalent to that required for a United States baccalaureate degree.

The Petitioner also submitted a document titled "Evaluation of Education and Work Experience." But this document does not indicate that the evaluator reviewed the coursework completed by the Petitioner or the number of credits earned, or performed any type of analysis of such data. Further, the evaluator does not state that the Petitioner's diploma is the equivalent of a bachelor's degree, or any other degree, from a United States college or university. Rather, they offer the following conclusory statement:

> Considering that a Economist Degree followed by more than five years of full-time work experience in the field of Finance is equivalent to a Master's degree in Finance, it is my expert opinion that [the Petitioner] with an Economist degree and 13 years of experience, has the equivalent of a U.S. Master's degree in Finance.

USCIS may reject or give lesser evidentiary weight to credential evaluations inconsistent with the record or "in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). There is no provision in the regulations which allows for the combination of work experience with any degree other than a United States baccalaureate degree or a foreign equivalent degree to reach the equivalent of an advanced degree. As the evaluation does not state that the Petitioner's diploma

[2] As noted by the Director, counsel stated in her brief submitted in response to the request for evidence (RFE) that the Petitioner graduated from BSEU with a Master's degree in finance. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Such evidence is not present in the record.

is equivalent to United States baccalaureate degree or a foreign equivalent degree, or provide any analysis to support its conclusions, it will not be given evidentiary weight.[3]

Because the Petitioner has not established that he holds a United States baccalaureate degree or foreign equivalent degree, he is not eligible as a member of the professions holding an advanced degree. He also does not assert that he is eligible for the EB-2 classification as an individual of exceptional ability. He has therefore not established his qualification for the underlying EB-2 classification, and we withdraw the Director's decision in that regard.

III. NATIONAL INTEREST WAIVER

As the Petitioner has not established that he is eligible for the EB-2 immigrant classification, he is not eligible for a national interest waiver. Nevertheless, we will briefly consider his claims under the *Dhanasar* analytical framework.

The Petitioner initially indicated on Form I-140, Immigrant Petition for Alien Worker, that his proposed endeavor was as an entrepreneur. In expanding upon this in his initial statement, he stated that he would be an independent business consultant, providing services to small and medium sized businesses. As this description was not sufficiently detailed, the Director sought further evidence regarding the Petitioner's proposed endeavor.

In responding to the Director's request for evidence (RFE), the Petitioner stated that he intends "to continue work in my area of expertise, namely the trucking industry." He submitted a business plan and company documentation for [redacted] which is described as a logistics company that will provide trucking services through independent contractor drivers. The business plan indicates that he will serve as the company's Operations Manager, with responsibilities for "overseeing the overall performance of the Company and supervising the work of its employees."

The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The information the Petitioner provided in the response to the Director's RFE did not clarify or provide more specificity to his initially described proposed endeavor, but rather it changed the nature of his proposed endeavor from offering business consulting services to operating a trucking company. Accordingly, the RFE response presented a new set of facts regarding the work the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); see also *Dhanasar*, 26 I&N Dec. at 889-90.

[3] The evaluation also makes a vague reference to a "3-for-1 Rule" and concludes that the Petitioner "attained sufficient years of specialized training and work experience to equate to the college coursework in Finance." The three-for-one formula alluded to in the evaluation applies only to H-1B nonimmigrant visa petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (describing a U.S. baccalaureate equivalency for H-1B purposes).

Because the information provided by the Petitioner in response to the RFE constituted an impermissible material change, we will only consider the evidence submitted in support of his original proposed endeavor.

A. Substantial Merit and National Importance

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. *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner's proposed endeavor of providing business consulting services is in the area of business, but the record lacks evidence to support its merit. Although the Petitioner provides several statistics regarding the importance of small businesses in the United States, he did not submit documentary evidence to support these statements. He has thus not established the substantial merit of his proposed endeavor.

Regarding national importance, the Petitioner again stressed the importance of small businesses to the United States' economy, claiming that his consulting services would assist in their successful development and therefore produce a benefit "of national caliber." However, we look to the individual's specific endeavor when determining its potential prospective impact, not the impact of an industry of field as a whole. Here, the Petitioner has not shown that his proposed consulting services would have broader implications for the U.S. economy or small businesses on a national level, beyond the relatively small number of businesses that he would serve. *Id.* Nor has he demonstrated that his proposed endeavor would have significant potential to employ U.S. workers, or would have other substantial positive economic effects. *Id.* at 890. The Petitioner did not claim that he would employ any U.S. workers, and did not provide projections of the impact of his business supported by verified data.

For the reasons given above, the Petitioner has not established the substantial merit and national importance of his endeavor, and he therefore does not meet the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

As discussed above, while the Petitioner did provide evidence of education related to his proposed endeavor, he did not show that his diploma was equivalent to a bachelor's degree from a college or university in the United States. In addition, while the Petitioner provided employment letters documenting his experience in e-commerce consulting, sales, and marketing, those letters lacked sufficient detail to demonstrate a record of success relating to his proposed endeavor. Further, the Petitioner did not provide any details or supporting documentation regarding the startup and

development of his consulting business, and as previously noted appeared to abandon this endeavor when responding to the Director's RFE. As such, he has not demonstrated that he is well positioned to advance his initial proposed endeavor, and does not meet the second prong of the *Dhanasar* analytical framework.

C. Whether on Balance a Waiver is Beneficial

The Petitioner also asserts on appeal that because the labor certification process focuses on minimum qualifications and would not take into account his previous experience, it would be beneficial for the United States to waive that process in his case. However, we need not determine whether he meets the third prong of the *Dhanasar* analysis. As the Petitioner cannot meet all three prongs in the *Dhanasar* framework, we reserve this issue.[4]

III. CONCLUSION

The Petitioner has not established his eligibility for the underlying EB-2 immigrant classification, and we withdraw the Director's decision in that regard. In addition, he has not shown that he is eligible for, and otherwise merits as a matter of discretion, a waiver of that classification's job offer requirement, and thus of a labor certification. The petition will remain denied.

ORDER: The appeal is dismissed.

[4] *See INS v. Bagamasbad,* 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).