U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25965824

Date: APR. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a dental healthcare worker, 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. *See* 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 either the Petitioner's eligibility for EB-2 classification or that a waiver of the classification's job offer requirement would be 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 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 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 USCIS may, as a matter of discretion,[1] 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 Director found that the Petitioner did not establish that he is a member of the professions holding an advanced degree, and as such did not establish that he qualifies for the EB-2 classification. The Director further found that the Petitioner did not establish eligibility under any of the three required prongs of the *Dhanasar* analytical framework and, therefore, did not establish that a waiver of the job offer requirement would be in the national interest. We reserve on the question of the Petitioner's EB-2 eligibility[2] and examine below whether he has established his eligibility under the *Dhanasar* analytical framework. *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").

For the reasons discussed below, we agree with the Director that the Petitioner has not established that a waiver of the job offer requirement is warranted. While we do not discuss each piece of evidence, we have reviewed and considered each one.

As to the Petitioner's proposed endeavor, he indicated on his Form I-140, Immigrant Petition for Alien Worker that he intends to work as a "dentist." In his initial Professional Plan & Statement, he further states that he will work as a "Healthcare Professional in Dentistry." He states that healthcare professionals in dentistry "diagnose and treat problems with patients' teeth, gums, and related parts of the mouth, as well as deal with complex cases or assist in surgical procedures."

In response to the Director's request for evidence (RFE), the Petitioner submitted a new "Definitive Statement" in which he states that he intends to establish a dental clinic in Florida for which he will serve as chief executive officer (CEO). He also provided a business plan regarding the establishment of this clinic. The business plan states that as CEO his job duties will be to "[d]etermine and formulate

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[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).

[2] The regulations define an advanced degree as "any United States academic or professional degree or a foreign equivalent degree" above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). Additionally, the regulations provide that a U. S. bachelor's degree or the foreign equivalent followed by at least five years of progressive experience in the specialty is equivalent to a master's degree. *Id.* To establish the requisite experience, the regulations require that the Petitioner submit "letters from current and former employer(s)" that include "the name, address, and title of the writer, and a specific description of the duties performed." 8 C.F.R. § 204.5(g)(1). If this evidence is unavailable, other documentation will be considered. *Id.* In the Director's decision, he found that the Petitioner established that he had obtained the equivalent of a U.S. bachelor's degree, but that the evidence did not establish that the Petitioner had at least five years of progressive experience following this degree. Although both the Petitioner's appeal brief and the initial filing contain passing statements that the Petitioner is "an individual of exceptional ability," the Petitioner did not discuss any of the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) used to establish exceptional ability nor did he provide evidence to establish that he meets the regulatory criteria. As such, he did not meet his burden to establish that he is an individual of exceptional ability. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

policies and provide overall direction" of the business; "[p]lan, direct, or coordinate operational activities at the highest level of management;" and "[d]irect and coordinate activities of businesses or departments concerned with the production, pricing, sales, or distribution of products," among other duties.

In analyzing the first prong of the *Dhanasar* analytical framework, the Director found that the Petitioner established the substantial merit of his proposed endeavor as a dentist but not its national importance. The Director found that the evidence overall did not establish that the Petitioner's proposed endeavor would have broader implications in the field of dentistry or that it has significant potential to provide substantial positive economic effects. The Director specifically excluded the business plan, submitted in response to the RFE, that altered the proposed endeavor to serving as CEO of a dental clinic. In considering whether the Petitioner had established his endeavor's national importance, the Director found that the plan postdated the filing of the petition and the Director stated that "[s]ubsequent developments or events in the career cannot retroactively establish that [the Petitioner] was already eligible for the classification sought as of the filing date," citing to *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

As stated above, the Petitioner asserts generally on appeal that the Director did not apply the proper standard of proof and erroneously applied the law. However, the Petitioner does not support these assertions with specificity as to the record or to the Director's conclusions. The Petitioner also asserts on appeal that the Director did not give due regard to the evidence in the record, including the Petitioner's business plan, letters of recommendation, and the submitted industry reports and articles.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Although the Petitioner discusses his business plan as part of the evidence to which the Director did not "give due regard," he does not address or make any arguments to overcome the Director's finding that the business plan constitutes a subsequent career development. Therefore, we consider the claim that the business plan helps establish eligibility as of the time of filing to be abandoned and we will not consider the business plan submitted in response to the RFE on appeal. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998).

Further, the Petitioner's letters of recommendation, written by his own professional associates, do not establish the national importance of his proposed endeavor. Primarily, the letter writers speak to his experience and skill in the dental field. None of the writers describe in detail the proposed endeavor or its potential impact. By contrast, the petitioner in *Dhanasar* submitted expert letters from individuals holding senior positions in academia, government, and industry that described the national

importance of the petitioner's specific area of research. *Matter of Dhanasar*, 26 I&N Dec. at 893. Moreover, evidence of the Petitioner's knowledge, skills, and expertise generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether he is well-positioned to advance it. *Id.* at 890.

Similarly, the expert opinion letter from [redacted] D.M.D., M.D.S.C., does not articulate how the Petitioner's specific proposed endeavor will have national importance. [redacted] asserts that there is a national shortage of dentists in the United States, that Brazil's dentists are "among the best in the world," and that this establishes the national importance of the proposed endeavor. However, these assertions relate to the dental industry overall and do not establish that the proposed endeavor itself will have a "broad impact" on the field of dentistry in the United States. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* Here, the expert opinion letter is of little probative value as it conflates the importance of the dental industry overall with the national importance of the Petitioner's specific endeavor.

Finally, as the Petitioner notes on appeal, the record contains many articles and industry reports about the lack of affordable dental care in the United States, the shortage of dentists and dental healthcare providers, and the economic impact of immigrants and immigrant entrepreneurs in the U.S. However, this evidence again relates to the dental industry overall and to the substantial merit of the proposed endeavor. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. The articles and reports do not discuss the Petitioner or his proposed endeavor of working as a dentist and do not support the endeavor's national importance.

The Petitioner's primary contention on appeal is that the Director applied a higher standard of proof than the preponderance of the evidence standard. In support, he largely restates arguments already presented in his initial brief and RFE response. We have thoroughly reviewed the evidence in the record and conclude that although the Petitioner asserts that his proposed endeavor has national importance, he offers little corroborative evidence or explanation to support his claims. While the Petitioner provided a significant volume of evidence, eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). Accordingly, we conclude that the Petitioner has not established the national importance of his proposed endeavor.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility under the first prong, we will not address those arguments here. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong, as well as whether the Petitioner has established eligibility for EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. at 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.