U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28789291

Date: DEC. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business process engineer, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category 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 in this category - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that a waiver of these U.S.-worker protections is "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition, concluding that the Petitioner established neither his eligibility for the requested immigrant visa category nor the merits of his waiver request. The Director also dismissed the Petitioner's following combined motions to reopen and reconsider, finding that he neglected to state whether he asked a federal court to review the decision. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C). On appeal, we withdrew the Director's motions decision and remanded the matter. *See In Re: 22678653* (AAO Oct. 19, 2022).

On remand, the Director again dismissed the Petitioner's combined motions, finding that they did not overcome the petition's denial grounds. The matter is now before us on a second appeal. The Petitioner asserts factual errors in the Director's latest decision.

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 conclude that, while the Petitioner has established eligibility for the EB-2 visa category, he has not demonstrated the merits of his waiver request. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the requested EB-2 immigrant visa category, either as members of the professions holding "advanced degrees" or 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 usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently

employ them in the country. *See* 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. Thus, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (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

A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian native and citizen, earned a bachelor's degree in mechanical engineering in his home country. He then worked for more than 10 years at a Brazilian equipment manufacturer as a business process engineer. He seeks to open a consulting company in the United States and help corporate clients reengineer their business processes.

B. The Requested Immigrant Visa Category

The Petitioner seeks to qualify for the EB-2 visa category as an advanced degree professional. An advanced degree professional must have an advanced degree. Section 203(b)(2)(A) of the Act. An advanced degree can include "[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

The record supports the Director's finding that the Petitioner's 2006 Brazilian degree equates to a U.S. bachelor's degree in mechanical engineering. The Director, however, concluded that the Petitioner did not demonstrate eligibility as an advanced degree professional because he did not establish his possession of at least five years of progressive, post-baccalaureate experience in the specialty.

Evidence of qualifying experience must include a letter from a former employer. 8 C.F.R. § 204.5(g)(1). The letter must contain the employer's name, address, and title and a specific description of the duties a noncitizen performed. *Id.* "If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered." *Id.*

The Petitioner initially submitted a letter from his former Brazilian employer, stating his employment as a business process engineer from August 2008 to December 2018 and describing his duties. The letter reflects the Petitioner's possession of more than 10 years of post-baccalaureate experience in the

specialty. But the Director noted that the document does not demonstrate the required progressive nature of the Petitioner's experience. The letter lists duties that he performed. But the letter does not state whether his job remained the same from its beginning, or whether he gained knowledge and responsibilities over time, reflecting progressive experience as required for the requested immigrant visa category.

The Petitioner later submitted another letter from his former employer, indicating the progressive nature of his experience. The letter states that his initial duties included modeling, integration, storage, and communication of the company's business practices, and revising and implementing standard process controls for business management. The letter states that, over time, he performed more advanced duties, including: conducting efficiency analyses of manufacturing processes; managing initiatives and projects to increase and sustain the company's performance; implementing and maintaining best practices; developing change management projects; and supporting employee training. Thus, the Petitioner has demonstrated his possession of at least five years of progressive, post-baccalaureate experience in his field.

The Petitioner has established his qualifications for the requested EB-2 visa category as an advanced degree professional with a bachelor's degree followed by more than five years of progressive experience in his specialty. We will therefore withdraw the Director's contrary finding.

C. Substantial Merit

A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The record shows that the Petitioner's proposed consulting company could help U.S. businesses grow and create U.S. jobs. We therefore agree with the Director that the Petitioner's proposed endeavor has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.*

As the Director found, the Petitioner has not demonstrated that his proposed consulting business would provide economic benefits of national significance. His business plan projects that, over the company's first five years, annual revenues would rise from $182,500 to $603,647, annual net profits would increase from $29,295 to $68,147, and personnel would grow from two to eight employees. But, even if these projections are realistic, the record does not explain how they would lead to economic benefits on a national scale.

The Petitioner contends that he would exclusively employ workers from economically depressed areas by matching candidates' addresses to "census tract numbers" for "low-income communities." While this plan sounds meritorious, the record does not indicate that the business would employ enough people to significantly affect the economically depressed areas where they live. Also, alternatively, the Petitioner has not demonstrated that his business would introduce advancements to the consulting or business process engineering field.

On appeal, the Petitioner argues that, by making U.S. businesses more profitable, his consulting company would spur U.S. economic growth. He states:

> The success of businesses can drive the success of an entire country, including through contributions to the gross domestic product (GDP) of a nation, which affects their world standing. By helping U.S. businesses improve their overall levels of performance, efficiency, and competitiveness, [my] Company will support the entire U.S. economy through contributing to job growth, revenue growth, and increased taxes.

As previously indicated, however, when considering national importance, we must focus on the *particular* endeavor. *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.") As the Petitioner contends, broad increases in businesses' profitability across the country would increase U.S. GDP, create jobs, and grow sales and tax revenues. But he has not demonstrated that his *specific* consulting business would attain sufficient size or scope to achieve such results on a national scale. In *Dhanasar*, we ruled that a professor's otherwise meritorious proposal to teach science, technology, engineering, and mathematics to university students was too narrow to have national importance. *Id.* at 893. Similarly, the Petitioner has not demonstrated that his proposed endeavor would impact his field "more broadly." *Id.* The record therefore does not establish that his proposed venture has national importance.

E. The Other Denial Grounds

Our conclusion that the Petitioner has not demonstrated the claimed national importance of his proposed endeavor resolves this appeal. We therefore need not consider and hereby reserve his appellate arguments regarding his positioning to advance his venture and the purported benefits of a waiver to the United States. *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 did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has demonstrated his qualifications for the requested EB-2 immigrant visa category as an advanced degree professional. But he has not established that his proposed endeavor has national importance and thus that he merits a national interest waiver.

ORDER: The appeal is dismissed.