U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29062626

Date: DEC. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physiologist, seeks classification as a member of the professions holding an advanced degree. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, 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 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed

endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's 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.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the noncitizen's qualifications or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[1]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

A. Whether the Proposed Endeavor has National Importance

Initially, the Petitioner described the endeavor as a plan "to advance his career as an [e]xercise [p]hysiologist and by doing so, develop, implement and advance using his in-depth knowledge acquired through years of experience in the field." The Petitioner added that he would "make his services available to both the private and public sectors in the United States." Although the Petitioner elaborated on the merits of exercise training and he summarized his prior training and experience, he did not initially elaborate on what the specific endeavor he proposes to undertake would entail, other than generally working as a physiologist for one or more potential private or public employer(s) at some unspecified time for some unspecified duration.

[1] *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

In response to the Director's request for evidence (RFE), the Petitioner resubmitted a copy of his professional plan already in the record. The Petitioner also quoted the RFE, which, in relevant part, states that the Petitioner's "proposed endeavor to advance [his] career in [e]xercise [p]hyisiology has merit and holds national importance," to which the Petitioner added that he "amply satisfies the first prong of the *Dhanasar* framework," declining to address the first *Dhanasar* prong further.

In the denial notice, the Director provided directly conflicting statements regarding whether the Petitioner's proposed endeavor satisfies the first *Dhanasar* prong. The Director stated, in relevant part, that the Petitioner "did not explain what [his] specific undertaking is in the United States. Since it appears as though [the Petitioner does] not have a project/undertaking in the United States, the evidence suggests that [the Petitioner has] no proposed endeavor." Nevertheless, the Director also stated, "The Proposed Endeavor's Substantial Merit[;] This criterion has been met. The Proposed Endeavor's National Importance[;] This criterion has been met[.]" The Director did not clarify how the Petitioner may have satisfied the first *Dhanasar* prong's requirement that a "proposed endeavor has both substantial merit and national importance," *Matter of Dhanasar*, 26 I&N Dec. at 889, despite also observing that the Petitioner appears to have "no 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, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner's proposed endeavor of working as a physiologist for one or more potential private or public employer(s) at some unspecified time for some unspecified duration, "to advance his career," appears to benefit the Petitioner, his unspecified potential employer(s), and the clients whom the Petitioner may assist as a physiologist. However, the record does not establish how the proposed endeavor of advancing his physiology career may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 889. Likewise, the record does not elaborate on any particular location in which the Petitioner anticipates working as a physiologist and how his endeavor of advancing his own career may have "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. We have reviewed the record in its entirety; however, it does not establish that the proposed endeavor has national importance. *See id.*

Based on the reasons discussed above, we withdraw the Director's statement to the extent that it indicates the record establishes the proposed endeavor has national importance. Therefore, the record does not satisfy the first *Dhanasar* prong. *See id.* Because the record does not establish that the proposed endeavor has national importance, the remainder of the *Dhanasar* framework is moot. Nevertheless, we will address the denial basis before us on appeal.

B. Whether the Petitioner is Well Positioned to Advance the Proposed Endeavor

Turning to the Director's stated basis for denial, the Director concluded that the record does not establish the Petitioner is well positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, specifically because it "lacks documents that further define the proposed work and where it will be done. The [Petitioner] did not provide interest from relevant parties showing financial and other support that is committed to him which will enable his furtherance of the endeavor."

On appeal, the Petitioner reasserts that he is well positioned to advance the proposed endeavor. He generally states, "Based on the evidence presented to the USCIS, it is clear that the Petitioner possesses an advanced degree." He also indicates that reference letters from two clients in the record address his record of success. He asserts that a copy of his business plan in the record "elucidates [his] progress in developing and establishing his own business in the United States, demonstrating a clear path towards achieving his entrepreneurial goals." He also asserts that copies of client invoices in the record are "concrete evidence of the level of interest and support from relevant individuals in the United States." The record does not establish that the Petitioner is well positioned to advance the proposed endeavor, for the reasons explained below.

Dhanasar contemplates four, non-exhaustive, general factors that may demonstrate an individual is well positioned to advance a proposed endeavor: "the individual's 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." *Matter of Dhanasar*, 26 I&N Dec. at 890.

Regarding the first factor, the record contains a copy of an academic evaluation letter from United States Credential Evaluations, dated December 2020, opining that the Petitioner's "Licentiate Degree in Physical Education, a Post-Baccalaureate Specialization in Exercise Physiology applied to Sports Training, a Bachelor's Degree in Physical Education, and 7 years of experience [equates to] no less than the equivalent of a U.S. Master of Science in Athletic Training." However, the record does not support that conclusion of the academic evaluation letter.

The record contains copies of documents written in a language other than English, accompanied by certified English translations that establish the [redacted], in Brazil, awarded the Petitioner a Bachelor's Degree in Physical Education in August 2016.[2] Therefore, as of the December 2020 date of the academic evaluation, the Petitioner could have had, at most, approximately four years and four months of post-bachelor's experience in the specialty, which is insufficient to equate to a master's degree, as the academic evaluation opines. *See* 8 C.F.R. § 204.5(k)(2) (defining "[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty" as the "equivalent of a master's degree"). Moreover, at the

[2] The other academic documents in the record, including the Licentiate Degree in Physical Education and Specialization in Exercise Physiology referenced by the academic evaluation, indicate that the Petitioner received those academic or professional degrees before he received the bachelor's degree in 2016. Specifically, the documentation relating to the Lato Sensu Postgraduate Course, at Specialization Level, in Exercise Physiology Applied to Sports Training, indicate that the [redacted], in Brazil, awarded that degree to the Petitioner on August 10, 2016. However, the documents relating to the bachelor's degree indicate that the [redacted] in Brazil, awarded the bachelor's degree to the Petitioner on August 18, 2016.

time the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, in March 2021, he could have had, at most, approximately four years and seven months of post-bachelor's experience in the specialty, which is insufficient to equate to an advanced degree, as defined by Federal regulations.[3] *See id.*

Regardless of whether the Petitioner has the equivalent of an advanced degree, the academic documents provide minimal information regarding the education, skills, knowledge, and record of success the Petitioner may have had in related or similar efforts to determine how well positioned the Petitioner may be to advance the proposed endeavor. We acknowledge that the degree specialty of physical education is related to the proposed endeavor's field of physiology. However, the transcripts for the Petitioner's academic studies—as translated in English in the record— provide minimal substantive information. More specifically, although the transcripts in the record identify the title of the "subject," the numerical "grade" awarded to the Petitioner for the completion of particular courses, and the respective "course hours," the record does not supplement the subject titles with additional information regarding the content of the subjects' coursework and other information that may establish how well positioned the Petitioner may be to advance the proposed endeavor, beyond merely stating the course titles he completed.

The record also contains copies of recommendation letters, both written in a language other than English and translated into English, with a certification from the translator. The letters generally attest that the Petitioner assisted the signatories in lowering their blood pressure and body weight, and in improving their general physical fitness. However, the original copies of the recommendation letters bear faded, pixelated images of signatures that could have been affixed to the documents by an unidentified individual using a word processor, rather than signed by the signatories' hands to indicate that they wrote the respective documents. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Because the letters bear faded, pixelated images of signatures that could have been affixed to the documents by individuals other than the ostensible signatories, they cast doubt on whether the respective signatories wrote the documents and, therefore, that the documents express the ostensible signatories' actual experiences and opinions. *See id.* Therefore, the reliability and sufficiency of the letters and, consequently, of other documents in the record, is undermined. *See id.*

Even to the extent that the letters of support may be reliable, they do not provide sufficient information to determine how well positioned to advance the proposed endeavor the Petitioner may be. They generally attest to the Petitioner's assistance. However, the letters address the Petitioner in generalized

[3] Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* section 203(b)(2) of the Act; *see also 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"); *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). We note, however, that the updated "Summary of Professional Qualifications" the Petitioner submitted in response to the Director's RFE indicates his most recent work experience was self-employed, between "February 2013 – January 2017" and "since August 2022." Because the Petitioner received his bachelor's degree in August 2016, he appears to have had approximately six months of post-bachelor's experience as of the March 2021 petition filing date, which is substantially less than the five years of post-bachelor's experience required by regulation to establish the equivalent of an advanced degree. *See* 8 C.F.R. § 204.5(k)(2).

terms and conclusory statements that provide limited insight into how well positioned he may be to advance the proposed endeavor, which we note also is described in the record in generalized terms. Given that the record contains minimal information regarding the "specific endeavor that the [noncitizen] proposes to undertake," the letters of recommendation's generalized terms and conclusory statements, in turn, provide minimal information regarding how well positioned the Petitioner may be to advance the vague proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

Regarding the second factor, we note that the record contains duplicate copies of a document titled "Professional Plan," dated February 2021. However, the plan provides minimal information regarding the Petitioner's model or plan for future activities. Instead, the document summarizes the Petitioner's prior training and experiences, and it provides generalized information regarding physiologists' duties. The plan states that the Petitioner "will create, develop and implement innovative solutions to attend U.S. companies' and client's [sic] needs." It also asserts that the Petitioner is "sure I will be invited to speak at lectures, seminars, congresses, symposiums, and other professional events." However, the document does not provide even basic details about a model or plan for how the Petitioner will generally "advance his career as an [e]xercise [p]hysiologist." Because the "Professional Plan"—and the remainder of the record—does not elaborate on how the Petitioner will accomplish his generalized endeavor, it does not establish a model or plan for future activities in such a way that may demonstrate how well positioned he may be to advance the proposed endeavor. *See id.*

Regarding the third factor, as noted above, the record contains minimal information regarding what the proposed endeavor will entail, other than generally "advancing his career as an [e]xercise [p]hysiologist." Because the record does not contain sufficient details regarding what the specific endeavor the Petitioner proposes to undertake entails, the record does not establish how much progress the Petitioner may have made toward achieving the vaguely described endeavor in such a way that may indicate how well positioned the Petitioner may be to advance the proposed endeavor. *See id.*

Finally, the Petitioner asserts that copies of client invoices in the record are "concrete evidence of the level of interest and support from relevant individuals in the United States." The record contains 14 client invoices, each dated "December 2022." We note, however, that the invoices do not indicate the period during which the Petitioner invoiced the clients for his services. The record does not otherwise contain copies of client invoices referenced by the Petitioner on appeal.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). 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).

Because the client invoices in the record are dated "December 2022," after the March 2021 petition filing date, apparently for services rendered at some unspecified point in 2022, they appear to present a set of facts that did not exist at the time of filing. Therefore, they cannot—and do not—establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Even if the invoices could establish eligibility, which they cannot and do not, they bear faded, pixelated images of signatures that could have been affixed to the documents by an unidentified individual using a word processor, rather than signed by the signatories' hands to indicate that they wrote the respective documents. Because the invoices bear faded, pixelated images of signatures that could have been affixed to the documents by individuals other than the ostensible signatories, they cast doubt on whether the respective signatories signed the invoices and, therefore, that the invoices express the ostensible signatories' acknowledgement of the respective sums owed for receipt of the Petitioner's services. *See Matter of Ho*, 19 I&N Dec. at 591. Therefore, the reliability and sufficiency of the invoices and, consequently, of other documents in the record, is undermined. *See id.*

Moreover, even if the invoices could establish eligibility and were otherwise reliable and sufficient, they do not provide sufficient information to determine how well positioned to advance the proposed endeavor the Petitioner may be. The extent of each of the invoices' identical "item description" is as follows: "Exercise physiologist intervention which includes developing fitness and exercise programs that have the purpose of helping patients recovering from chronic diseases and improving cardiovascular function, body composition, and flexibility." The invoices do not elaborate on any particular service the Petitioner provided to any of the ostensible clients other than some unspecified type of physiological "intervention." Therefore, even if the invoices could establish eligibility and were otherwise reliable and sufficient, they provide minimal information regarding the services in which potential customers, users, investors, or other relevant entities or individuals may be interested, in order to determine whether the Petitioner is well positioned to advance the 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. As a separate basis of ineligibility, because the record does not establish the Petitioner is well positioned to advance the proposed endeavor, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, in addition to the requisite second prong, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.