U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26361699

Date: JUL. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business consulting entrepreneur, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *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 employment based second preference (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 Texas Service Center denied the petition, concluding 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. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petition 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.

The regulation at 8 C.F.R. § 204.5(k)(2) defines exceptional ability as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." To demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii):

> (A) 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;

(B) 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;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If the above standards do not readily apply, the regulations permit a petitioner to submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

And 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. Whilst 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 USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) 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 the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's

qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition 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. Each of the factors 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.

II. ANALYSIS

A. Categorical Ineligibility for EB-2 Classification

In the first instance, we conclude that the Petitioner has not provided relevant, material, or probative evidence to demonstrate their categorical eligibility for classification as an EB-2 immigrant. So we withdraw the Director's conclusion that the Petitioner is qualified for classification as an EB-2 immigrant based on their exceptional ability.

The Petitioner attests they are eligible for EB-2 classification as a noncitizen of exceptional ability. In support they presented evidence of their completion of a course in legal studies from a foreign institution,[1] membership in an organization, the salary/remuneration they earned for their services, evidence of recognition in their field in the form of letters from individuals who have availed themselves of the Petitioner's services, and comparable evidence such as proof of publications and presentations.[2]

The Petitioner contended they have commanded a salary, or other remuneration for services, which demonstrates exceptional ability. The Petitioner stated their earnings in 2019 exceeded those of the average person in their field by a factor of 13. They further contrasted their earnings with those positions falling under the "Management Analysts" occupational category as described in the Department of Labor's Occupational Information Network (O*NET). But the record does not reflect the salary or remuneration expected for individuals performing duties comparable to those the Petitioner intends to undertake. For example, there is no evidence in the record which would permit us to evaluate the duties a business consultant in Russia would perform for the salary and remuneration the Petitioner presents as a point of comparison. And the broad job description contained in O*NET did not readily correspond to the description of services and duties the Petitioner had described for their proposed endeavor. So the Petitioner has not met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) because we cannot evaluate from information in the record whether the Petitioner's salary or remuneration "demonstrates exceptional ability."

[1] The Petitioner has demonstrated by a preponderance of the evidence that they meet the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(A).

[2] The Petitioner did not provide evidence of a license to practice the profession or certification for a particular profession or occupation, or evidence in the form of letter(s) from current or former employer(s) showing that they have at least ten years of full-time experience in the occupation under 8 C.F.R. § 204.5(k)(3)(ii)(B) and (C). So the Petitioner has abandoned those grounds.

The Petitioner's membership in the World Institute of Scientology Enterprises (WISE) is not sufficient evidence of membership in a professional association.[3] Section 101(a)(32) of the Act, 8 U.S.C. § 1101(1)(32), defines the term "profession" as including "but not limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies or seminaries." WISE is not a professional association. While certainly not dispositive, we note initially that it does not correspond to any single profession as listed or contemplated in section 101(a)(32) of the Act. WISE is an organization which "disseminates the administrative works of...L. Ron Hubbard for use in organizational, professional and private endeavors." Consequently, we do not agree that an association of "entrepreneurs, creative professionals, business owners, executives and leaders," i.e. many different professions and occupations united by use of "the Hubbard Administrative Technology in their enterprises" is a professional association as that term is contemplated in the regulations, and the Petitioner has not met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner submitted numerous letters of recommendation prepared contemporaneously with these immigrant petition proceedings in support of the claim they received recognition for achievements and significant contributions to their field. The evidence the Petitioner submits does not meet the standard of proof because it does not satisfy the basic standards of the regulations. *See Matter of Chawathe*, 25 I&N Dec. at 374 n.7. The regulation requires evidence of recognition of achievements and significant contributions. When read together with the regulatory definition of exceptional ability, the evidence of recognition of achievement of significant contributions should show expertise significantly above that ordinarily encountered in the field. The Petitioner's letters of recommendation contain vague statements about the Petitioner's entrepreneurial skills that the Petitioner would like us to conclude are recognition of achievements and significant contributions. But these statements are not supported by any evidence in the record which reflects that these are noteworthy as achievements and significant contributions. For example, many letters in the record credit the Petitioner's services with helping them realize business success. However, the evidence in the record does not show why this is especially noteworthy and how it constituted an achievement in, and a significant contribution to, the Petitioner's field. The letters also contained statements of appreciation to the Petitioner for performing their duties in what they considered an impressive manner. For example, they credited the Petitioner with 'providing insights" or "aid[ing] us greatly." However, it is not clear from the evidence how the competent performance of the services the Petitioner was engaged to perform are achievements in, and significant contributions to, the Petitioner's field. In a similar vein, the letters credit the Petitioner's "methodology" with success. Again, the attestations in the letters are not supported by evidence in the record demonstrating an achievement in and significant contribution to the Petitioner's field above that ordinarily encountered in the field.

The Petitioner also identified their "Effective Staff Payment System" as a significant contribution to their field. The "Effective Staff Payment System" is copyright registered with the International Online Copyright Office. Registration with the International Online Copyright Office is not evidence of an achievement in and significant contribution to the Petitioner's field above that ordinarily encountered in the field. It is evidence of the Petitioner's intention to assert that assert their materials are original, recorded in evidentiary form, and predate other works.

[3] The Petitioner exclusively used the acronym WISE in the materials submitted into the record; they did not express what the acronym stood for. But the Petitioner did provide identifying details such as WISE's headquarters, number of regional offices, and the "common thread" of use of the Hubbard Administrative Technology corresponding to information contained on the WISE website at https://wise.org/en/.

The Petitioner also submitted documentation reflecting publication of articles and interviews largely in web publications as well a list of speaking engagements. The articles were largely promotional of the Petitioner's background and activities but did not establish how the Petitioner's background and activities reflected exceptional ability or significant contributions to their field. Similarly, the record did not contain evidence of the exceptional or significant nature of the Petitioner's speaking engagements and how they demonstrated significant contributions their field. So the Petitioner's letters of recommendation, "Effective Payment System", publication of articles and interviews, and speaking engagements are not achievements or significant contributions to the industry or field demonstrating eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(D)

The Petitioner has established eligibility in only one of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). They cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii). So we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification. The Petitioner is ineligible for the EB-2 immigrant classification as a noncitizen of exceptional ability.

B. Eligibility for Discretionary Waiver of the Job Offer Requirement and thus of a Labor Certification

Ordinarily, only after determining the Petitioner's eligibility under the EB-2 category would the Director proceed to determine whether a discretionary waiver of the job offer requirement, and thus a labor certification, is warranted. Section 203(b)(2)(B)(i) of the Act. But since the Director's decision here made specific findings about the Petitioner's eligibility for a national interest waiver in their decision upon which the Petitioner's appeal is grounded, we will discuss the Petitioner's ineligibility for a discretionary waiver of the job offer requirement, and thus of a labor certification, notwithstanding their categorical ineligibility for the EB-2 permanent immigrant classification.

Dhanasar's three-prong analytical framework permits us to consider, as a matter of discretion, whether to grant a national interest waiver if a petitioner demonstrates that their proposed endeavor has both substantial merit and national importance; that they are well-positioned to advance their proposed endeavor; and whether, on balance, waiving the job offer requirement would benefit the United States.

The Director determined that the Petitioner's proposed endeavor had substantial merit. But the Director concluded that the proposed endeavor did not have the required national importance to meet the first prong of the *Dhanasar* framework. We agree.

In *Dhanasar* we focused the first prong of our analysis on the potential impact of a Petitioner's specific proposed endeavor to consider its national importance. The national importance of an endeavor is rooted in its potential impact and whether it has national or global implications within the field of endeavor. The broader implications, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. And substantial positive economic effects can also elevate a proposed endeavor to one of national importance, for example when those effects

have significant potential to employ U.S. workers or other positive economic effects particularly in an economically depressed area.

The Petitioner's endeavor proposes to provide their entrepreneurial business consulting services to aid small businesses with job growth and employee retention. Specifically, the Petitioner will "guide U.S. small businesses and starts ups to sustainable expansion and growth…providing entrepreneurs and business owners with the software, consultancy, and training" to achieve corporate objectives.

In support of their claims regarding the proposed endeavor's broader implications and potential prospective economic impact, the Petitioner submitted an "impact statement" and articles describing the effect of the COVID-19 pandemic on socio-economic factors, unemployment, and business operations. The Petitioner also submitted a research summary from the United States Small Business Administration's Office of Advocacy describing the gross domestic product attributable to small business between 1998 and 2014.

From the outset, the Petitioner couches their endeavor in terms of targeting their services to individual small businesses. The record contains documentation reflecting the prevalence of small and medium-size business in the United States. The Petitioner highlights the COVID-19 pandemic for a downward trend in economic indicators like employment and points to their entrepreneurial business consulting as a service through which these troubles can be addressed on the road back to profitability or net positive operations. The impact statement reflects that the Petitioner's "expertise in creating online business goals, monitoring performance, and increases sales via data-driven insights will be a key contribution to U.S. small businesses' ability to thrive going forward."

The Petitioner essentially argues that the ripples of their entrepreneurial business consulting work with small businesses will have broader implications rising to a level of national importance. However, the Petitioner does not connect their work to any broader implications to the field outside of the work they would be specifically doing for the small businesses that would engage their services. As we said above, it is not required that the benefit of a petitioner's proposed endeavor extend beyond geographical bounds. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. But the relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. The Petitioner has not demonstrated how conferring the benefit to their clients grows beyond their clients alone.

The Petitioner argues that the services of entrepreneurial business consultants like their endeavor will help small businesses spur "downstream economic activity" chiefly by benefiting the financial health of their clients who will in turn contribute to the economy. But the record does not support the magnitude of the activity the Petitioner describes. Whilst the articles and information the Petitioner submitted into the record reflect that small business as a sector is important and identifies certain systemic challenges that small businesses face, they do not support how the additional of entrepreneurial business consulting services such as those provided by the Petitioner would benefit small business in a broad manner which implicated the national interest.

And whilst the Petitioner identifies the "Effective Staff Payment System" as a key cog in the services they would offer, the record is silent about how the utilization of their methodology in the proposed endeavor broadly impacts the national interest positively through a positive economic impact of

sufficient magnitude to implicate the national interest. The "Effective Staff Payment System" has been copyrighted and registered internationally with the International Online Copyright Office. But mere copyright and registration does not illuminate the prospective positive impact of the system, nor does it demonstrate positive economic effects broadly implicating the national interest. It is not clear from the record how the "Effective Staff Payment System's" utilization in the proposed endeavor itself, such that it is, would have a substantial prospective positive economic effect commensurate with national importance.

A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). The Petitioner has not met their burden of proof with persuasive material, relevant, and probative evidence which by a preponderance demonstrates the national importance of their proposed endeavor.

III. CONCLUSION

Because the identified reasons are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the remaining *Dhanasar* prongs. *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"); *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 is otherwise ineligible).

The Petitioner is not eligible for EB-2 classification as an immigrant of exceptional ability. And they have not met the requisite first prong of the *Dhanasar* analytical framework. So we conclude that they have not established that they are eligible for or otherwise merit a national interest waiver of the job offer requirement, and thus of a labor certification. Accordingly the appeal will be dismissed.

ORDER: The appeal is dismissed.