U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27416165

Date: JULY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 an advanced degree professional 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence:

> (A) An official academic record showing that the [noncitizen] 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 [noncitizen] 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 [noncitizen] has commanded a salary, or other renumeration 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.

8 C.F.R. § 204.5(k)(3)(ii).

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we

examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Matter of Chawathe, 25 I&N Dec. at 376.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they 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 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 USCIS may, as matter of discretion[2], 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 Petitioner proposes to work in the United States as an administrator and financial analyst. He earned a diploma specializing in administration from Universidade [redacted] in Brazil in 2020.

The Director did not make a determination as to the Petitioner's eligibility for the EB-2 classification but found that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Individual of Exceptional Ability

The Petitioner asserted that he is eligible for the EB-2 classification as an individual of exceptional ability having met three of the six exceptional ability criteria, specifically 8 C.F.R. § 204.5(k)(3)(ii)(A), (C) and (F). In a request for evidence notice, the Director indicated that the Petitioner satisfied one criterion, official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A). For the reasons discussed below, we do not agree with the Director that the Petitioner met this criterion. Furthermore, the record does not satisfy at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii).[3]

> An official academic record showing that the individual 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. 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner submitted a copy of his foreign language diploma from Universidade [redacted] in Brazil accompanied with an English translation, an English translation of his academic transcripts, and an evaluation of his academic credentials. However, the Petitioner did not submit a

[2] 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).

[3] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

copy of his original untranslated academic transcripts corresponding to the English translation. The Petitioner is required to submit a copy of documents accompanied by a full English language translation. See 8 C.F.R. § 103 .2(b)(3). English language translations may not be provided in lieu of foreign language documents. Without a copy of the Petitioner's untranslated academic transcripts, the Petitioner has not submitted documentation meeting the evidentiary requirements for "official academic record" in order to demonstrate the Petitioner's eligibility for the EB-2 classification. 8 C.F.R. § 204.5(k)(3)(i).

The Petitioner has not met the plain language of the criterion.

> A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

In support of this criterion, the Petitioner submitted a foreign language professional statement accompanied with an English translation. The Petitioner's English translation includes the statement, "I hereby declare that this translation is faithful to the original document." However, the document does not include the required certification of competence. See 8 C.F.R. § 103 .2(b)(3). Furthermore, we note errors in the translation, such as incorrectly transcribing dates, that detract from the credibility of the translation. Because the Petitioner did not submit a properly certified English language translation of the professional statement, we cannot meaningfully determine whether the translated material is accurate and thus supports his claims in support of this criterion.[4] .

As previously discussed, "foreign language documents must be accompanied by a full English language translation." 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. Id. Without a certified English translation, we are unable to determine the evidence's relevance and reliability on the issue of whether the Petitioner has a license to practice his profession or is certified in his occupation.

Had the Petitioner submitted the required English translation for the professional statement, it would nevertheless be insufficient to meet the criterion. The professional statement appears to indicate that the Petitioner is registered in the profession of administration by the Federal Council of Administration. The Petitioner asserts this professional statement "was issued by the main supervisory body for the Administration professionals in Brazil, and it certifies that [he is] able to exercise the profession according to Brazilian laws." However, the Petitioner did not submit evidence supporting his claims, nor does the record contain documentation from the Federal Council of Administration indicating that the Petitioner is licensed or certified to practice his profession. Without documentary evidence to support the claims, the Petitioner's assertions will not satisfy his burden of proof.

The Petitioner also submitted foreign language certificates to show his eligibility for this criterion. However, the certificates are not accompanied by full English translations. Without the requisite full,

[4] In support of this criterion, the Petitioner also submitted foreign language certificates. Like the other documents in the record, these too lack properly certified English translations. Moreover, we note that, absent more, certificates showing class completion do not demonstrate the Petitioner has a license or certification to practice a particular profession under this criterion.

certified English language translations of the foreign language certificates, we are unable to consider their relevance and reliability in meeting this criterion.

The record does not satisfy this criterion.

> Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner indicates he meets this criterion based on his work with his previous employer, [redacted] He submitted a letter of support and an honor certificate, both issued by [redacted] The letter and certificate show that the Petitioner's employer valued the Petitioner's services and recognized the Petitioner's financial management skills helped his employer's business. However, they do not demonstrate how the Petitioner's services had an impact or extended beyond his employer, at a level that the Petitioner has been recognized for achievements and significant contributions to his industry or field. The Petitioner has not established that he meets the criterion.

Since the Petitioner has not established that he meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F), we need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

For the reasons discussed, the Petitioner has not established his eligibility for EB-2 classification.

B. The Proposed Endeavor

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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.[5] In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889.

The Director found that that the Petitioner did not establish that his proposed endeavor is of substantial merit and therefore is not eligible for a national interest waiver as a matter of discretion. On appeal, the Petitioner asserts that the Director did not thoroughly review the evidence and provides a general argument that he meets all three Dhanasar prongs.

Initially, the Petitioner provided little detail concerning his proposed endeavor. In his Form I-140, he stated that he would work as an administrator and financial analyst. He included a statement explaining that he would be "available to work at any time in companies based in the United States . .

[5] See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policymanual.

." with a goal "to work in the areas of [f]inance and [p]roject [m]anagement." In his personal plan, the Petitioner stated, "Find a job that I identify myself with and that pays me well in the finances or project management areas." The Petitioner asserted that his "services can serve as a key competitive advantage for companies to overcome the new challenges of the economic recovery that the country is facing."

In support of his petition, he submitted printouts of many job opportunities for varying positions, including financial analyst, account manager, product manager, payroll manager, finance recruiter, senior analyst revenue manager, business analyst, accounts payable clerk, finance strategist for banking and financial products, budget analyst, investment consultant, real estate finance specialist, banking account specialist, and personal banker. The Petitioner did not sufficiently explain the relevance of these separate job opportunities in relation to his proposed endeavor. This is important, as we held in Dhanasar that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889.

The Director issued a request for evidence notice advising the Petitioner that, among other shortcomings, he provided insufficient detail about his specific proposed endeavor. In his response to the request for evidence notice, the Petitioner submitted further evidence relating to his proposed endeavor, including his statement and a business plan describing the establishment a new business named [redacted]. The business plan states, "[redacted] is a brand new technology company focused on energy solutions" by using wind turbines for clean and renewable energy. The business plan indicates that the Petitioner would work as the business's chief executive officer with responsibility for its management, commercial activities, and commanding the business's operations in the United States.

USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). As explained by the Director, the purpose of the request for evidence notice is to elicit further information that clarifies whether a petitioner has established eligibility for the benefit sought as of the time the petition was filed. See 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence notice, a petitioner may not make material changes to the 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 Petitioner cannot materially change the proposed endeavor after submitting his petition. If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record as at the time of filing.

The Petitioner's reply to the request for evidence explaining his plan to establish a new business constituted a materially different endeavor and changed the focus of the Petitioner's endeavor from what he indicated in his petition. The Petitioner did not acknowledge or explain this material change. The Petitioner's plan to establish a new business will not be considered in this decision, and we limit our decision to the proposed endeavor stated in the Petitioner's initial petition,

The Petitioner initially proposed working in the field of administration and finance for U.S. companies submitting more than 30 different job postings he may seek to pursue. The job postings relate to a range of fields, including an accounts payable clerk, an accountant, a retail finance manager, a bank investment consultant, a real estate finance specialist, recruitment, and consulting work. The record

lacks evidence demonstrating the virtues of these different and diverse fields. The record developed at the time of filing demonstrated that the Petitioner's proposed endeavor was essentially a job search. And the purpose of a national interest waiver is not to facilitate a petitioner's U.S. job search. Therefore, the Petitioner has not established by a preponderance of the evidence, that each of these potential fields of endeavor have substantial merit. Therefore, we agree with the Director that "the [P]etitioner has not submitted a detailed description of the proposed endeavor and documentary evidence demonstrating that the proposed endeavor has substantial merit . . . ."

Upon de novo review, we agree with the Director that the Petitioner has not established that the proposed endeavor is of substantial merit.

Because the record does not sufficiently establish the substantial merit of his proposed endeavor, as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third 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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the record does not establish that the Petitioner qualifies for second-preference classification as an individual of exceptional ability, or that the Petitioner has met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.