U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27415857

Date: JUL. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree and he 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 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) contains the following relevant definition:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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 that they merit 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

II. ANALYSIS

The Petitioner's proposed endeavor is to be "an Entrepreneur, leveraging his knowledge and expertise in the sales, budget management, new business development, negotiations, and hospitality areas to expand his already registered American company, [redacted] The Petitioner's business plan states that his company will "provide a high quality services as pet sitter, daycare, pet boarding and dog walking to pet's owners who desire to provide the best care for their pets while they are traveling out of their hometown, working or on vacation." The Director found that the Petitioner did not establish that he is an advanced degree professional, 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 classification's job offer requirement is in the national interest.

A. Member of the Professionals Holding an Advanced Degree

We will first address the threshold requirement that the Petitioner must qualify for classification under Section 203(b)(2)(B)(i) of the Act, as a member of the professions holding an advanced degree. On appeal, the Petitioner claims that the Director misstated the year in which the Petitioner obtained his bachelor's degree to 2014 and thereby erred in concluding that the Petitioner does not have five years of post-baccalaureate progressive experience.

Upon de novo review of the record, we find that the Petitioner in fact earned his bachelor's degree in tourism from University [redacted] in Brazil in 2001. The academic transcript confirms that his studies took place from 1995 to 2001. According to the academic evaluation on record, the Petitioner's degree is foreign equivalent of a U.S. bachelor's degree in hospitality management and includes courses such as international tourism, administration, geography, economy, and philosophy, along with some fundamental classes in accounting, statistics, and business.

[1] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Petitioner submitted a job letter from the [redacted] department at [redacted] stating that he has been working as a customer service agent since February 2020 assisting guests with vacation needs and answering inquiries. The Petitioner also submitted a letter from [redacted] stating that he worked as a sales director from June 2003 to June 2018 performing tasks such as cultivation of client relationships, analysis of contracts, price strategy, and business management.

The record demonstrates that his experiences were gained after he obtained his bachelor's degree in 2001. As such, the Petitioner has established, more likely than not, that he possessed the foreign degree equivalent of a bachelor's degree, and at least five years of progressive post-baccalaureate experience in the specialty at the time of filing of the petition in accordance with 8 C.F.R. § 204.5(k)(3)(i). Therefore, we find the Petitioner is eligible for the EB-2 classification as an advanced degree professional and withdraw the Director's finding in this matter.

B. National Interest Waiver

We now turn to the Petitioner's eligibility for the national interest waiver under *Dhanasar*. The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of the *Dhanasar* framework.[2] The Director stated that the record does not demonstrate how the Petitioner's entrepreneurial endeavor as an owner of [redacted] a pet sitting and boarding services company, stands to have a broader impact on his field or would offer substantial economic benefits to the region where it operates or to the nation. We agree with the Director's decision.

On appeal, the Petitioner contends that the Director did not apply the proper standard of proof and erred by not giving "due regard" to the evidence submitted, specifically the Petitioner's resume, business plan and definitive statement, documentation of his work in the field, letters of recommendation, and industry reports.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director analyzed the Petitioner's documentation and weighed his evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Instead of showing the national importance of his specific endeavor, the Petitioner submitted articles, reports, and survey on importance of entrepreneurship and small businesses in general and the economic impact of

[2] The Director also found that the Petitioner did not meet the second or third prongs of the *Dhanasar* analytical framework.

immigrant entrepreneurs in the United States. We recognize the value of the entrepreneurship as well as significant contributions from immigrants who have become successful entrepreneurs; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

The Petitioner claims that he demonstrated national importance through previously submitted letters of support discussing his knowledge, skills, and work experience. However, these documents relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Additionally, these letters do not address how the Petitioner's proposed endeavor stands to sufficiently extend beyond himself and his customers to impact the field or suggest that his entrepreneurial skills somehow differ from or improve upon those already available and in use in the United States, as contemplated by *Dhanasar*: "[a]n 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.*

The Petitioner contends that his entrepreneurial endeavor will "provide services to a broad range of business subjects within the industry" and "facilitate the improvement of U.S. businesses, as well as drive a number of investment projects, thus impacting the country's economy as a whole." However, generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and that "[a]n 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.* at 890.

The Petitioner's business plan demonstrates that [redacted] is a small family business with a revenue of $142,200 in year 2021 (which is projected to grow to $156,600 in year 2022 and 2023) and a management team consisting of the Petitioner and his wife. The business plan anticipates hiring other managers when other locations open in Florida, but the Petitioner does not discuss the process or plan for developing these other locations. The business plan also mentions that some areas in Florida need "new business to provide jobs for unemployed local people" without detailed projection for staff hiring or analysis of the endeavor's impact on these "depreciated" areas.

The Petitioner provided one potential investor's notarized affidavit that expresses interest to invest in the company, but the record lacks any evidence of actual investment or official steps towards such investment. Instead, the potential investor makes unsubstantiated claims regarding the Petitioner's proposed endeavor's impact: "I am positive [redacted] presence in the U.S. will bring fundamental contributions to the nation with his ability to make business growth and attracting investors to contribute to the local economy at large." The Petitioner also submitted letters and printout of online reviews written by satisfied customers who have used the company's services, but they do not indicate any projected U.S. economic impact or job creation specifically attributable to the Petitioner's business.

We acknowledge that any offer of goods or services has the potential to impact the economy; however, the record does not support the Petitioner's small business providing pet sitting and boarding services would operate on such a large scale that would benefit the U.S. economy or the business industry rising to the level of national importance. In addition, the record does not demonstrate that the company will provide substantial impact to any economically depressed areas in Florida. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's 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 Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.