U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26968350

Date: JUN. 06, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a supply chain specialist and entrepreneur in the event services industry, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business. *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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the classification's job offer requirement 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.

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. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] U.S. Citizenship and Immigration Services (USCIS) has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion[3], 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. EB-2 CLASSIFICATION

The first issue to be addressed is whether the Petitioner established his eligibility for an underlying EB-2 classification.

The Petitioner stated on his Form I-140, Immigrant Petition for Alien Worker, that he intends to work as a supply chain specialist in the United States. According to the professional plan submitted with the petition in November 2019, he specifically intends to supply patented modular bar counters and other portable structures to companies operating in the food and beverage, entertainment, and event planning industries. Subsequently, he submitted a business plan for a Florida limited liability company he established in 2020, noting that his company will provide planning and deployment services for small, medium, and large events, as well as management outsourcing services for larger events.

A. Exceptional Ability

At the time of filing, the Petitioner claimed that he can meet the initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (E) and (F) and that he otherwise qualifies for classification as an individual of exceptional ability in the sciences, arts, or business. The Director determined that the Petitioner is eligible for this EB-2 classification and proceeded to an adjudication of the Petitioner's request for a national interest waiver. After de novo review of the evidence, we conclude that the Petitioner did not establish that he meets the requirements of any of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), nor has he shown that he possesses a degree of expertise significantly above that ordinarily encountered in his field. Accordingly, for the reasons provided below, we will withdraw the Director's determination that the Petitioner established his eligibility as an individual of exceptional ability.

[3] *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).

Evidence in the form of letter(s) from current or former employer(s) showing that the individual has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The Form I-140 was accompanied by a Form ETA 750, Part B, Application for Alien Labor Certification, on which the Petitioner listed his relevant work experience. He indicated that he worked on a full-time basis as a production assistant for [redacted] an event planning business in [redacted] Brazil, from December 1999 until February 2014, noting that his duties included responsibility for bar logistics and operations at events, acting as a team coordinator for social and corporate events and shows, hiring staff, supplying modular bar structures at major events, and supervising the assembly and disassembly of the supplied structures. The Petitioner indicated that he concurrently worked 40 hours per week as a "structure supplier" for two additional event planning companies, specifically for [redacted] (from October 2003 until August 2013) and for [redacted] (from February 2004 until July 2012).

The record does not support the Petitioner's statement that he was employed on a full-time basis for the employers listed on the Form ETA 750. The Petitioner's resume indicates that he is an "entrepreneur operating with furniture sales/rental for events" and that he was engaged in "supplier services" in Brazil between December 1999 and August 2015, providing structures for events and assisting with event logistics and organization. According to his resume, he was employed with [redacted] as a production assistant from December 1999 until January 2002, but he lists no other employer.[4] Rather, he includes a list of companies to which he provided supplier services, which includes the three companies named as employers on his Form ETA 750 and 11 other companies. As evidence in support of this criterion, he submitted letters from the companies that contracted him for his services. The letters describe the products and services he provided as a supplier and note that the amount of pay he received varied "due to the demand of the company's events schedule." Accordingly, the Petitioner has not provided evidence from current or former employers that documents his ten years of full-time experience in the occupation in which he intends to work in the United States, as required by the plain language of this criterion.

The regulation at 8 C.F.R. § 204.5(k)(4) allows petitioners to submit comparable evidence to establish their eligibility if the regulatory standards do not readily apply to their occupation. While it appears that the Petitioner was self-employed in Brazil, he did not submit sufficient comparable evidence to establish his ten years of full-time employment. He did not provide, for example, evidence that he had a business registered in Brazil, provide tax records or other financial records that would corroborate his full-time engagement in the business, or provide letters from individuals who could attest to his full-time self-employment. Accordingly, the Petitioner has not established that he meets this criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

In support of this criterion, the Petitioner provided evidence that he was registered as an associate member of the United States Bartenders' Guild (USBG) for the period June 2019 to June 2020. The Petitioner provided a screenshot from the organization's website which states that its goal is "to

[4] A letter from this company indicates that the Petitioner was employed in the production assistant position on a "freelance" basis; the employer does not indicate it was a full-time position.

empower bartenders to take charge of their careers" and that it accomplishes its career advancement mission through "peer-to-peer learning, expert instruction, service projects, and competition." The evidence submitted does not document the criteria or requirements for associate membership in the USBG.

Although the Director determined that the Petitioner satisfied this criterion, the limited evidence presented is not sufficient to demonstrate that USBG has a membership body comprised of individuals who have earned a U.S. baccalaureate degree, or its foreign equivalent, or that the organization otherwise constitutes a professional association.[5] Further, the record does not contain evidence that the Petitioner maintained his membership from the time of filing through adjudication of the petition in 2022. *See* 8 C.F.R. § 103.2(b)(1). Finally, the Petitioner does not indicate that he intends to work as a bartender in the United States, so it is unclear how this membership is relevant to the proposed endeavor. Although the Petitioner's latest resume indicates that he is also a member of the Association for Supply Chain Management and the Florida United Businesses Association, he did not claim membership in either of these associations at the time of filing or submit supporting evidence documenting his membership in either association or the associations' respective membership requirements.

For the reasons discussed, the Petitioner has not established that he meets 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).

As evidence for this criterion, the Petitioner provided reference letters from four business associates in the events industry whose companies have used his products and services, an article about him that appeared in four online Brazilian publications in 2019, and evidence related to his Brazilian and international patent applications for his invention "[redacted]"

While the patent indicates the original nature of the Petitioner's modular counter product, a patent alone does not provide sufficient evidence of an individual's recognition for achievements and significant contributions to the industry. Rather, the significance of the innovation must be determined on a case-by-case basis. Here, the record is otherwise lacking sufficient explanation and corroborating evidence to demonstrate that the Petitioner's patented product has been recognized as a significant contribution in his field or industry.

In his letter, [redacted] a partner for [redacted] Management, discusses the Petitioner's development of the prototype for the modular bar counter, noting that the Petitioner, while working as a bartender, had identified a need to innovate the process of providing bar service for large events. He praises the Petitioner's modular bar system, and notes [redacted] used it for many major sports events, concerts, and social events. [redacted] states that the Petitioner's bar counter structures "filled our creative needs . . . created new opportunities and linked the image of innovation to our agency." A letter from [redacted]

[5] The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation."

[redacted] owner of [redacted] praises the quality of the Petitioner's modular bar counters and decorative panels, noting that his company partnered with the Petitioner for university-sponsored events during the graduation season in Brazil. [redacted] states that "[the Petitioner's] projects presented superior quality compared to those in the market and the speed in the assembly and dismantling of the bar counters and stage structures created a different opportunity in the production logistics, reflecting significant impact in costs and budgets." He asserts that the Petitioner's modular counters and panels were essential to [redacted] monopolization of the university events market and its financial success and expresses his belief that the Petitioner has an "impressive and nationally important track record of achievements." Reference letters from two additional business associates similarly praise the Petitioner and his design of modular structures for events organized by their companies.

The submitted letters demonstrate that the Petitioner's work is highly regarded by his clients and business associates and contributed to their ability to successfully organize and execute large-scale events. However, the evidence does not show how his patented product or related services have had an impact that extends beyond his clientele, and their specific projects, at a level demonstrating that he is recognized for significant contributions to the industry or field.

As noted, the Petitioner also submitted a [redacted] 2019 promotional article titled [redacted] published online by four different Brazilian media outlets. Although the Petitioner refers to this evidence as an "article," one of the submitted versions (published by *Exame* magazine) indicates that it was published in the "[redacted]" section of the publication with a disclaimer that "the press releases and other commercial disclosure content in this section are the responsibility of [redacted] EXAME is not responsible for this content." The press release discusses the Petitioner's work in the events industry, his design of the patented modular bar structure, the demand for the product among Brazilian event managers, and his plans to offer the product in the U.S. market. However, the Petitioner did not establish that this promotional material demonstrates recognition for his achievements and significant contributions to his field or industry by "peers, governmental entities, or professional or business organizations," as required by the plain language of the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

Overall, the evidence submitted in support of this criterion establishes that the Petitioner has designed an original product that has been well-received by clients who have chosen him as a supplier for their events. However, the record does not demonstrate that his product is more broadly recognized as a significant contribution to the industry or field. The Petitioner has not established that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification. The Director's determination that he is eligible for classification as an individual of extraordinary ability in the sciences, art, or business is withdrawn.

B. Advanced Degree Professional

We have also considered, in the alternative, whether the Petitioner qualifies for EB-2 classification as a member of the professions possessing an advanced degree under section 203(b)(2)(A) of the Act.

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

The Petitioner did not claim eligibility as an advanced degree professional at the time of filing. In response to a request for evidence (RFE) issued by the Director, counsel stated that the Petitioner "is a professional who has attained the equivalent of an Advanced Degree in supply chain" and noted that the Petitioner was submitting employment letters "which outline his years of progressive post-baccalaureate experience."

In a "definitive statement" also submitted in response to the RFE, the Petitioner stated that he has "a bachelor's degree in marketing management from [redacted] College Association," but the record contains no supporting evidence, such as official academic records of any degree, diploma or certificates awarded to the Petitioner by this college or any other institution. In addition, we observe that he did not complete the section of Form ETA 750, Part B, which requests information regarding all schools, colleges or universities attended, and his resume does not provide any information regarding his education. Because the Petitioner has not submitted evidence that he holds an advanced degree or foreign equivalent degree, or a bachelor's degree followed by five years of progressive post-baccalaureate experience, he has not established his eligibility for classification as a member of the professions possessing an advanced degree under section 203(b)(2) of the Act.

III. NATIONAL INTEREST WAIVER

Although the record does not demonstrate that the Petitioner qualifies for EB-2 classification under section 203(b)(2) of the Act, we will nevertheless address the Director's determination that he did not establish his eligibility under the first and third prongs of the *Dhanasar* analytical framework. The Director found substantial merit in the proposed endeavor but concluded that the record did not establish that the Petitioner's endeavor has national importance and therefore did not meet the first *Dhanasar* prong. The Director also concluded that the Petitioner did not establish that, on balance, it would be beneficial to the United States to waive the requirement of a job offer, and thus of a labor certification, under the third *Dhanasar* prong. On appeal, the Petitioner asserts that he submitted enough evidence to establish eligibility, and that, by failing to give that evidence sufficient weight, the Director imposed an improperly strict standard of proof.

We adopt and affirm the Director's decision as it relates to the first prong of the *Dhanasar* framework. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Director's decision reflects a careful and thorough review and analysis of the Petitioner's claims and supporting evidence under the first prong of *Dhanasar*. The Petitioner broadly contends on appeal that the Director did not give due consideration to his business plan, the above-referenced "definitive statement," his letters of recommendation, and industry reports and articles, noting that such reports

demonstrate the national importance of his proposed endeavor. However, all of this evidence is specifically addressed in the Director's decision and the Petitioner does not further articulate how the Director failed to give proper weight to the evidence.

For instance, the Director addressed the substance of the Petitioner's business plan and its specific five-year staffing and growth projections, as well as the Petitioner's stated intention to locate the business in a HUBZone designated by the U.S. Small Business Administration. However, the Director explained that the Petitioner did not indicate that his endeavor would participate in the SBA HUBZone program, substantiate the growth projections in the business plan, or demonstrate that his endeavor will have substantial positive economic effects, particularly in an economically depressed area. The Director further observed that the endeavor's projected staffing of 19 full- and part-time workers within five years was insufficient to demonstrate a significant intent to employ U.S. workers. Further, despite recognizing the endeavor's potential to impact the individual and corporate clients it intends to serve, the Director found that the record contains insufficient evidence that the endeavor's event planning, deployment and management services would have broader implications, or national or global implications, within the specific field or industry. After conducting a lengthy analysis, the Director concluded that the information contained in the business plan, considered within the context of other evidence in the record, did not show that the prospective impact of the proposed endeavor would rise to the level of having national importance.

We have reviewed the business plan for the Petitioner's company, and affirm that it does not establish that the company's staffing levels and business activity would provide substantial economic benefits in Florida or the United States, that it would meaningfully alleviate a shortage of trained professionals in the event planning and supply chain services field, or that its projected future revenues of $1.35 million would significantly impact the event planning or supply chain industries, which are described in the record as $3.0 billion and $7.5 billion markets, respectively.

The Petitioner also contends that the Director did not consider industry articles and reports, noting that such reports highlight the national importance of the supply chain industry. However, as highlighted by the Director, in determining national importance, the relevant question is not the importance of the 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. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Even if an industry is considered nationally important, the Petitioner must still demonstrate the implications of his specific proposed endeavor within that industry. The Director's decision reflects that due consideration was given to the industry articles and reports insofar as they are relevant to the first prong of the *Dhanasar* framework.

Finally, the Petitioner maintains that the Petitioner did not give sufficient weight to the submitted recommendation letters and personal statement. This evidence, along with a considerable portion of the Petitioner's appellate brief, primarily focuses on the relevance of his professional experience, past achievements, and abilities. While important, the Petitioner's expertise acquired through his prior experience in the field relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* Here, the Director considered the relevant evidence and determined that the Petitioner satisfied the second prong. The issue under *Dhanasar's*

first prong is whether the specific endeavor the Petitioner proposes to undertake has national importance and, for the reasons discussed, the Director properly concluded that he did not meet his burden with respect to the first prong.

Because the Petitioner has not established his proposed endeavor has national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. We reserve our opinion regarding whether the evidence of record satisfies the third *Dhanasar* prong. *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).

IV. CONCLUSION

For the reasons discussed, the Petitioner has not established that he is eligible for the underlying EB-2 classification as an individual of extraordinary ability or as a member of the professions possessing an advanced degree. Further, he has not established that he merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.