U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26965512

Date: JUN. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a security services specialist and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act, 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.

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).

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 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ADVANCED DEGREE PROFESSIONAL

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree, noting that he submitted evidence that he "holds the equivalent of a Master of Arts in Security Management." For the reasons provided below, we conclude that the record does not support the Director's determination that the Petitioner holds an advanced degree as defined at 8 C.F.R. § 204.5(k)(2).

The Petitioner submitted the following evidence in support of his claim that he qualifies for EB-2 classification as an advanced degree professional:

- Diploma issued by Ministry of Defense, Brazilian Army 38th Infantry Battalion, indicating that the Petitioner completed "the Infantry Course of the Center for Preparation of Reserve Officers" in [redacted] 2008.
- Certificate and school curriculum issued by University [redacted] (Brazil) indicating that the Petitioner completed a "Higher Education Course of Technology in Private Security Management" in January 2011, resulting in the degree of "Technologist" following studies completed over the course of two and one-half years.
- Certificate and transcript issued by the Center of Higher Education [redacted] (Brazil) indicating that Petitioner completed a one-year postgraduate course in criminology in 2015, for which he was granted the degree of "Specialist."

The Petitioner also provided an "Evaluation of Training, Education and Experience" from USA Evaluations.[2] The evaluator's report states the following regarding the Petitioner's diploma from the Brazilian army:

> Graduation from high school and competitive entrance examinations are requirements for admission and enrollment at Brazilian Army which is an accredited institution of higher learning in Brazil. Following his enrollment in the University, [the Petitioner] completed academic coursework, and in 2008, he completed examinations and was awarded an Aspiring Officer of the Infantry of the Brazilian Army degree. The diploma demonstrates that he completed his four-year course of studies at Brazilian Army.
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> [He] completed coursework in general studies and in his area of concentration, Infantry of the Army, which leads to a degree from the University.

[1] *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).

[2] The evaluation is on the letterhead of USA Evaluations; the individual who prepared the evaluation states that he is a "senior evaluator for [redacted]

The evaluator's report also mentions the Petitioner's completion of studies at University [redacted] and the Center of Higher Education [redacted] noting that the Petitioner, "with a four year degree, a Higher Education degree, a Specialization and more than 9 years of experience, has no less than the equivalent of a Master of Arts in Security Management."

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Here, the evaluator appears to opine that the Petitioner's diploma received upon completion of an infantry officer training course in the Brazilian army is equivalent to a U.S. bachelor's degree, which is typically awarded after four years of study. Other evidence in the record contradicts the evaluator's determination that the Petitioner completed four years of post-secondary study in the Brazilian army. First, the Petitioner's academic transcript from University [redacted] indicates he completed high school in 2006, just two years prior to receiving his diploma from the Brazilian army at 19 years of age and it is therefore unclear how he could have completed four years of post-secondary education as of 2008. Further, the Petitioner did not submit a transcript for his coursework or any other evidence supporting the evaluator's conclusion that the Brazilian army infantry course was a four-year academic program.

Finally, the record contains the Petitioner's "Certificate of Military Service" and "Certificate of Time of Military Service" issued by the Brazilian Ministry of Defense. This document indicates that the Petitioner was "registered" on [redacted] 2008, and "licensed" on [redacted] 2008, the same date of completion provided on his military-issued diploma. It indicates his "time of service . . . as an OFR student" and his "total time of service in the military" as "Zero Year[s], Seven Months and Two Days." Therefore, the record does not support the evaluator's opinion that the Petitioner completed four years of post-secondary education with the Brazilian army or that his infantry course diploma is equivalent to a four-year bachelor's degree. For these reasons, we conclude the evaluation holds little probative value in this matter.

The Petitioner's academic records reflect his completion of two and one-half years of postsecondary education and one year of postgraduate coursework in two separate and unrelated programs, but the submitted evaluation does not offer any individualized analysis or conclusion regarding the equivalency of the Petitioner's "technologist" and "specialist" diplomas.

We have also consulted the Electronic Database for Global Education (EDGE),[3] created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[4] EDGE includes a list of credentials from Brazil. The list includes the following credentials that represent attainment of a level of education comparable to a bachelor's or master's degree, respectively, in the United States:

- *Titulo de bacharel* (title of bachelor);

[3] EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php.

[4] AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." http://www.aacrao.org/who-we-are.

- *Titulo de mestre* (master's degree program); and
- *Mestrado professional* (professional master's degree program).

Here, the Petitioner did not provide an official academic record demonstrating that he possesses any of these credentials. EDGE indicates that a "title of technologist" is "awarded following 2 to 3 years of university study," while a "specialist" title is awarded "following programs of various lengths; most are at least 1 year long."[5] This information is consistent with the academic transcripts provided for the Petitioner's respective post-secondary programs.

To demonstrate education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2). A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty).

Accordingly, we withdraw the Director's determination that the Petitioner is eligible for EB-2 classification as a member of the professions holding an advanced degree.

III. NATIONAL INTEREST WAIVER

Because the Petitioner has not established his qualification for the underlying EB-2 classification, he is not eligible for a national interest waiver under the *Dhanasar* framework. However, we will address the Director's decision and discuss the remaining issue of whether the Petitioner submitted evidence that would otherwise establish that a discretionary waiver of the job offer requirement would be in the national interest.[6]

At the time of filing, the Petitioner indicated that he intends to advance his career as a security services specialist in the fields of law enforcement, criminal justice, and public safety. Specifically, he stated that, once he obtains U.S. lawful permanent residence and the appropriate licensure, he intends to operate his own security training and consulting firm, "[redacted]," to "advise and train all forms of public and private security officials and law enforcement members in the United States," and "to provide specialized consulting for U.S. law enforcement agencies." In response to a request for evidence (RFE), the Petitioner submitted an updated personal statement and a business plan for "[redacted]," which he states will offer "personal, property, and residential security services, as well as cybersecurity, international travel advisory and training services," and "consulting services for corporate security."

The first prong of the *Dhanasar* framework focuses on the specific endeavor the individual proposes to undertake and requires the Petitioner to establish both the substantial merit and national importance

[5] *See* Brazil Credentials, https://www.aacrao.org/edge/country/credentials/brazil.

[6] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

of the endeavor. 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director concluded that the Petitioner established that his proposed endeavor has substantial merit but determined he did not meet his burden to establish the national importance of the endeavor. Specifically, the Director determined that the Petitioner had not shown how his proposed endeavor would have broader implications within his field that would reach beyond clients utilizing his services, or that it would broadly enhance societal welfare. In this regard, the Director observed that claims that the proposed endeavor would "contribute to a streamlined criminal justice system and a responsive and advanced law enforcement sector" and that the endeavor is "linked to national security" were not substantiated in the record. The Director further observed that the record did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner maintains that the Director did not apply the preponderance of the evidence standard and did not give due regard to the Petitioner's business plan and definitive statement, industry reports and articles demonstrating the national importance of his proposed endeavor, and evidence of his professional experience and accomplishments. With respect to the national importance of the proposed endeavor, the Petitioner points to the staffing and income projections in his company's business plan and emphasizes that he will establish the company in a Small Business Administration (SBA) HUBZone area in Florida. He further maintains that he "has broadly impacted the security services sector" throughout his career and that he will continue to do so as an entrepreneur in this sector in the United States. In support of these claims, he references previously submitted media articles and reports regarding challenges facing law enforcement and the impacts of immigrants and entrepreneurs on the U.S. economy, noting that "firms and businesses owned by new Americans provide millions of jobs for U.S. workers and generate billions of dollars in annual income."

For the reasons provided below, we conclude that the Petitioner has not established the national importance of his proposed endeavor.

The Petitioner's business plan and personal statements emphasize the challenges currently facing U.S. law enforcement agencies, and he provided industry articles and reports addressing national concerns in the field, including the opioid crisis, gun violence and surging homicide rates, rising rates of technology-based crime, increased public and media scrutiny of law enforcement agencies, and issues regarding law enforcement officer recruitment and retention. We do not question the significance of these issues and their direct bearing on public safety and security, or their indirect impact on other aspects of life in the United States. The record also contains reports that discuss the private security industry as a "crucial component of security and safety in the United States." When determining national importance, however, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposed to undertake. *Matter of 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.*

Based on the business plan submitted in response to the RFE, the Petitioner has not shown how the private security services he intends to provide to individuals and businesses would have broader implications in the private security, public safety, or law enforcement sector. He broadly states that "a reduction in crime and increased levels of safety will have a positive impact on individuals' overall quality of life" but the record does not provide adequate support for a determination that his specific proposed endeavor will have such a wide-reaching impact. In *Dhanasar,* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record supports the Director's conclusion that the Petitioner has not submitted sufficient evidence to establish what the broader implications of his work would be, or that his work would extend beyond his company and its clients to impact the private security services industry in which it intends to operate, or that it would broadly enhance societal welfare at a level commensurate with national importance. While the Petitioner proposes to perform work in an area of national importance, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor.

We also stated in *Dhanasar* 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 will be understood to have national importance." *Id.* at 890. On appeal, the Petitioner emphasizes that he will establish his company in an SBA HUBZone area in Florida where it will generate "192 full-time and part-time jobs for U.S. workers with an expected total payment of wages of approximately $8.2 million dollars in the first five years."

We reviewed the Petitioner's business plan, including its revenue and employment projections. The business plan does not corroborate the job creation claims that the Petitioner makes on appeal. Rather, the Petitioner's business plan projects the employment of 81 staff and payroll of expenses of $3.94 million by its fifth year of operations. Regardless, the job creation and revenue projections included in the Petitioner's business plan are not supported by details showing their basis or an explanation of how those projections will be realized. Even if the Petitioner had established a sufficient basis for these projections, they would not establish the national importance of the proposed endeavor. While the sales forecast and projected income statement indicate that the Petitioner's company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar. Id.* at 890.

In addition, the Petitioner has not offered sufficient evidence that the area where his company will operate [redacted] Florida) is economically depressed, that it would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. On appeal, the Petitioner asserts that his business will operate in an SBA HUBZone in Florida and appears to equate a HUBZone with an "economically depressed area."[7] However, the Petitioner's business plan states only that the

[7] Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized

business will open in [redacted] Florida; it makes no mention of the HUBZone program or its intent to establish a location within a designated HUBZone or to participate in the program. We have also considered claims that there are labor shortages in the Petitioner's industry, but he has not suggested that his proposed endeavor would lessen the shortage of trained security professionals on a scale rising to the level of national importance or that the specific services his company will offer are otherwise scarce in the region or in the United States. In fact, the record reflects that Florida is home to almost 10% of the security services establishments in the United States and it does not appear that the region is underserved.

For all these reasons, the Petitioner has not shown his endeavor has significant potential to employ U.S. workers or that the specific proposed endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue.

In his personal statements and appellate brief, the Petitioner has placed considerable emphasis on his academic training in private security management and his professional experience in the field. The record also contains recommendation letters from his former employers in Brazil. While important, the Petitioner's expertise acquired through his academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner's past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry. While the Petitioner maintains that he has already "broadly impacted the security services sector" through his performance in a "wide range of distinctive industry roles," the submitted recommendation letters do not contain sufficient detail to corroborate this claimed impact.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from an adjunct professor at [redacted] University. In addressing the first prong of the *Dhanasar* framework, the author describes Brazil's "extensive and well-developed security market" and the opportunities it presents for security suppliers. He states that U.S. companies "doing business or planning to do business in Brazil would benefit from the expertise and skills of a criminologist and a private security manager with an extensive knowledge of the legal landscape in Brazil." The professor concludes that the Petitioner's work would be "in an area of substantial merit and national importance." However, the author does not address the Petitioner's business plan, the specific proposed endeavor, and its prospective substantial economic impact, nor does he address the broader implications of the proposed endeavor in the field. In fact, the author appears to be under the impression that the Petitioner's proposed endeavor will be limited to consulting with companies intending to enter the Brazilian security market, which is not the business model described by the Petitioner. Further, most of the letter's discussion of the first prong of the *Dhanasar* analysis simply provides background information about Brazil's security market.

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business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. *See* "HUBZone Program," https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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 second and third *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 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 a member of the professions holding 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. 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.