U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25679016

Date: JUN. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 record did not establish that the Petitioner is eligible for and otherwise merited 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. 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).

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

[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).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If 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 U.S. Citizenship and Immigration Services (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. ELIGIBILITY FOR THE EB-2 CLASSIFICATION

The Director concluded in his decision that the Petitioner is not eligible for a national interest waiver, since he did not meet any of the three prongs under the *Dhanasar* analytical framework. But the Director did not analyze whether the Petitioner qualifies for the underlying EB-2 immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability. Instead, in the discussion of the third prong of the *Dhanasar* framework, he states only that "the petitioner has not established that he qualifies for the requested classification." Per the analysis below, we conclude that the Petitioner has not established his eligibility for the underlying classification.

A. Member of the Professions Holding an Advanced Degree

The Petitioner submitted copies of his diploma and transcripts from [redacted] University which show that he earned a Bachelor of Arts with Honours degree in Business Studies in July 2008. The writer of an expert opinion letter opined that this program is "substantially similar to the required coursework leading to the completion of bachelor-level studies in the specialty of business studies from a regionally accredited university in the United States." However, he does address specific features of this program as noted on the transcripts, such as the "sandwich placement" in the second year and "repeating part time" in the fourth year. Because of the ambiguous and incomplete evidence regarding the Beneficiary's educational credentials, we reviewed the Electronic Database for Global Education (EDGE), an online resource that federal courts have found to be a reliable, peer-reviewed source of

[2] 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.
[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).

foreign educational equivalencies.[4] EDGE states that a bachelor of arts, science, nursing, midwifery, engineering, education, or science in physiotherapy degree from the United Kingdom compares to a U.S. bachelor's degree.

Turning to the required five years of progressive, post-degree experience in the specialty, the Petitioner referred to the five reference letters he submitted. As will be discussed below, these letters are from business partners and clients who generally describe their working relationships with the Petitioner, including specific projects. Evidence of qualifying experience must be in the form of letters from current of former employers and shall include the name, address and title of the writer and a specific description of the duties performed, but if that evidence is unavailable, other documentation will be considered. 8 C.F.R. § 204.5(g)(1). While we recognize that the Petitioner has been self-employed for most of his career, the letters lack specific dates concerning the work done by or with the Petitioner, and the record also lacks supporting evidence of the ongoing nature of the Petitioner's business during this period, such as tax, financial and business registration records. We conclude that the evidence does not sufficiently establish that the Petitioner has at least five years of progressive, post-degree experience in his specialty, and therefore he does not qualify as a member of the professions holding an advanced degree.

B. Individual of Exceptional Ability

The Petitioner alternately claimed to qualify for the EB-2 classification as an individual of exceptional ability. While he claimed to meet all six of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii), of which three must be met, he did not specify the evidence which supported his claims to each criterion. We have already acknowledged the Petitioner's possession of a degree which relates to his area of exceptional ability above, which satisfies the criterion under 8 C.F.R. § 204.5(k)(3)(ii)(A). However, as discussed above, the reference letters do not show the dates of his employment or that it was full-time, and therefore he has not sufficiently established that he has at least ten years of full-time experience as a CEO, sales director, or entrepreneur.

In addition, the record does not include documentary evidence of the Petitioner's possession of a license or certification related to his occupation, membership in a professional association, or of his salary or other remuneration. 8 C.F.R. §§ 204.5(k)(3)(ii)(C), (D), and (E). And while the reference letters describe projects that the Petitioner has worked on in, such as interior design and importation of luxury furniture as discussed in greater detail below, they do not show recognition for achievement and significant contributions to the industry or field. The Petitioner has therefore not established that he meets at least three of the evidentiary criteria, and we need not conduct a final merits determination of whether he possesses a degree of expertise significantly above that ordinarily encountered in business. We conclude that he is not eligible as an individual of exceptional ability.

[4] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a "non-profit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *See* AACRAO, at www.aacrao.org/edge; *see also, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount letters and evaluations that differ from reports in EDGE, which is "a respected source of information").

III. NATIONAL INTEREST WAIVER

The Petitioner is an entrepreneur in the area of interior design and furniture import and retail. He proposes to continue serving as owner, CEO and sales director of his business in [redacted] Florida, [redacted] Specifically, he states that he will build his existing business to provide services including real estate staging and interior design, and he intends to employ seven workers within five years. While the Petitioner has not established his eligibility for the underlying classification, we will also analyze whether he merits a national interest waiver of that classification's job offer requirement.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director concluded that the Petitioner's proposed endeavor is of substantial merit, but he did not provide an analysis of the evidence supporting this conclusion. The Petitioner notes that his endeavor is in the fields of business and entrepreneurship, and evidence in the record shows its potential positive economic effects. As such we agree with the Director.

As for the national importance of the Petitioner's proposed endeavor, the Director mainly focused on the Petitioner's business plan for [redacted] noting that he expects his business to employ seven workers within five years and generate annual revenues of nearly $2 million within the same period. However, he concluded that this evidence does not show that the proposed endeavor would have broader implications for the overall field beyond that of the Petitioner's company, or that the job creation laid out in the business plan would have the potential to provide substantial positive economic effects to the region or nation.[5]

On appeal, the Petitioner argues that contrary to the language in the Director's decision, the *Dhanasar* precedent decision does not require him to show both a significant potential to employ U.S. workers *and* potentially substantial positive economic effects in order to establish the national importance of his proposed endeavor, but only one of those. This is a misreading of *Dhanasar*, as the significant potential to employ U.S. workers is given as one example of a substantial positive economic effect that may show national importance. In addition, the Petitioner asserts that since there is no threshold number of workers employed or tax revenue generated that is identified in *Dhanasar* which would be considered "significant" or "substantial," the Director was obligated to find national importance if the proposed endeavor has the potential to positively impact an interest that is of inherent importance to the area or nation. This interpretation is also not supported by the plain language of our precedent decision.

[5] The Director also included a paragraph at the end of his discussion of the first prong of the *Dhanasar* framework which indicates that the Petitioner did not sufficiently describe his proposed endeavor. As the record includes ample detail regarding the proposed endeavor, including the business plan mentioned in the decision, we withdraw this portion of the Director's decision.

Our decision in *Dhanasar* provides examples of how a proposed endeavor can be considered to be of national interest, and is clear that this is not evaluated *solely* in geographic terms. But whether the potential prospective impact comes from national implications for an entire field or industry, or from a significant potential to employ U.S. workers or other substantial positive economic effects, *Dhanasar* states that we look for broader implications. Here, the Petitioner has stated that he will continue to build his existing business in the [redacted] Florida area by providing interior design, real estate staging, and furniture import and retail services, and that his business will potentially employ seven workers within five years. He asserted that this endeavor will be of national importance "because its implications and benefits will be felt not only by his current clients in the Americas and Europe, but by other collateral businesses across the United States… as it "will directly require the use and employment of various supporting businesses."

The record shows that the Petitioner exclusively imports (and plans to continue to import) furniture from Europe, and therefore does not support his assertion that his proposed endeavor would be of importance to the United States in terms of its impact on manufacturing and production of raw materials. In addition, while he also asserted that his proposed endeavor would have a positive impact on shipping and warehousing businesses, and submitted reports showing the volume and value of shipping in [redacted] airports and ports, the record does not show that [redacted] would potentially have a measurable impact on employment or revenue in these sectors in the [redacted] area.

Other evidence relating to direct and indirect employment includes the Petitioner's business plan, which in addition to the direct employment of seven workers including the Petitioner, projects the indirect employment of an attorney, CPA, marketing specialist, and unidentified positions at banks and other financial institutions. But this evidence does not show that the direct employment of six individuals other than the Petitioner and the business generated for supporting companies and their employees would have a substantial positive economic effect in the [redacted] area such that the proposed endeavor would have a broader impact.

The Petitioner also stresses on appeal that the Director's decision does not address the expert opinion letter that he submitted, and argues that this evidence, together with the client letters, show why his proposed endeavor is of national importance. In discussing the national importance of the Petitioner's endeavor, the expert opinion letter cites to broad statistics concerning international trade, entrepreneurship, small businesses in the United States, and the furniture and interior design industries in general. But it bears repeating that the focus of the first prong in the *Dhanasar* analytical framework is a petitioner's specific proposed endeavor, not the broader industries or fields in which they work. *See Dhanasar*, 26 I&N Dec. at 889. At no point does the letter discuss the national importance of the Petitioner's specific proposed endeavor as the owner of a business engaged in interior design and furniture import and retail.

As additional evidence submitted in support of the national importance of his proposed endeavor, several current and former clients of the Petitioner wrote reference letters which mainly discuss their ongoing business relationship with him.[6] For instance, the co-founder and principal of Turkish furniture producer [redacted] describes his own business and his business relationship with the Petitioner, noting that he has exclusive rights to sell their furniture in Florida. While he also stresses

[6] All of the reference letters in the record have been reviewed, including those not specifically mentioned in this decision.

the importance of this relationship to his company and its prospects, the letter does not expand upon the importance of the Petitioner's endeavor to the U.S. economy or workforce.

Similarly, [redacted], the owner of a design firm, describes projects in which he collaborated with the Petitioner, and asserts that the continuation of the Petitioner's business is critical to countless other designers in the U.S., as well as to furniture manufacturers in Europe. He also states that the Petitioner's endeavor supports "thousands if not millions of dollars in trade between the U.S. and Europe," and that he has discussed a joint venture business with the Petitioner. However, the record lacks documentation to support these assertions regarding the potential economic impact of the Petitioner's endeavor.

Other reference letters in the record similarly describe projects in which the writer has worked with the Petitioner. Although these letters help to document the Petitioner's expertise and reputation within his field, they do not, individually or collectively, establish that the potential economic contribution of the Petitioner's proposed endeavor rises to the level of national importance.

For all of the reasons given above, the record does not establish that the Petitioner's proposed endeavor is of national importance, and therefore does not show that he meets the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The Director concluded that the evidence does not show that the Petitioner has a record of success as an entrepreneur/CEO/interior designer, or that the evidence shows interest in his endeavor from relevant parties and progress towards achieving the goals of his proposed endeavor. On appeal, the Petitioner argues that the Director's decision lacks an analysis of the reference letters, business plan and other materials submitted. He also notes that not all of the factors listed above need be met for a petitioner to show that they are well positioned to advance their endeavor.

The record shows that the Petitioner has relevant education relating to his field of endeavor, and has years of experience in managing a business. The evidence also shows that he has operated [redacted] for several years, and during that time he has completed projects and established business contacts in his industry. For example, the letter from [redacted] details several interior design projects in which he collaborated with the Petitioner, and describes his reliance on the Petitioner's connections with European furniture manufacturers. Another letter from [redacted], managing director of a luxury furniture design company, describes his working relationship with the Petitioner and several commercial projects in which the Petitioner coordinated furniture orders between the client and manufacturer. These letters show that the Petitioner has the necessary expertise to advance his proposed endeavor.

Other considerations relate specifically to entrepreneurs such as the Petitioner seeking a national interest waiver. See generally 6 *USCIS Policy Manual* F.5(D)(4), https://www.uscis.gov/policy-manual. One of these highlighted by the Petitioner on appeal is published materials about the petitioner and their business which shows significant attention or recognition by the media. The evidence includes a paragraph in the [redacted] describing [redacted] and the furniture it sells, as well as evidence regarding the prestige of these travel guides. While the Petitioner asserts that this paragraph appeared in the 2015 and 2019 editions of the guide, the evidence shows only the 2019 edition.

In addition, the Petitioner submitted an interview of him that appeared in *South Florida Business & Wealth* magazine (SFBW) in [redacted] 2021 in which he discusses his [redacted] after personal and business setbacks. The magazine describes itself on its website as "South Florida's premiere business and lifestyle magazine," but no independent documentary evidence was submitted regarding SFBW's reputation.

We note that the record lacks any documentation of [redacted] financial or job creation history such as tax returns, audited financial statements, or any other tax or financial evidence. There is also no independent, documentary evidence to support the Petitioner's claims of his investment in [redacted] or that of other business partners or investors. However, the reference letters and media described above establish his reputation and connections within the luxury furniture industry, and together with the evidence of his experience as a business manager and entrepreneur show that he is sufficiently well-positioned to advance his endeavor. We therefore disagree with the Director and conclude that the Petitioner meets the second prong of the *Dhanasar* analytical framework.

C. Whether on Balance a Waiver is Beneficial

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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.

As a petitioner must meet all three prongs of the framework to be eligible for a national interest waiver, we reserve our evaluation of whether, on balance, it would be in the national interest to waive the EB-2 classification's job offer requirement. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established his eligibility for the EB-2 classification as either an advanced degree professional or an individual of exceptional ability. In addition, while we disagree with the Director regarding the second prong of the *Dhanasar* framework, the Petitioner has not shown that his proposed endeavor is of national importance, and he is therefore not eligible for a national interest waiver.

ORDER: The appeal is dismissed.