U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23791761

Date: JUN. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical engineer, seeks employment-based second preference (EB-2) 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 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 he was eligible for, and otherwise merited as a matter of discretion, a national interest waiver. 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. ANALYSIS

A. Eligibility for the EB-2 Classification

The Petitioner submitted evidence that he received a Title of Mechanical Engineer degree from the University [redacted] (Venezuela) in July 2012, and that this degree is the equivalent of a bachelor's degree in mechanical engineering from an accredited college or university in the United States. He also submitted several employment letters showing that, subsequent to earning this degree, he worked as an instructor at the University [redacted] and in training and technical roles in the field of mechanical engineering. The Director concluded that this evidence established his eligibility as a member of the professions holding an advanced degree. However, after review of this evidence, we disagree and withdraw the Director's decision.

The evidence establishes that the Petitioner holds the foreign equivalent of a bachelor's degree from an accredited college or university in the United States. To show that he has at least five years of progressive, post-baccalaureate experience in his specialty, the Petitioner submitted his curriculum vitae and several employer letters. These letters show that during several periods from 2011 to sometime in 2018, he was employed part-time in a teaching role at the University [redacted] While the subjects he taught related to the field of mechanical engineering, his specialty and proposed endeavor are as a project manager engaging in mechanical engineering projects. This evidence therefore does not show that he gained post-baccalaureate experience in his specialty.

Other letters were submitted from his former managers at [redacted] a Volkswagen and Porsche car dealer. These letters verify his CV and show that he worked there as a support engineer and technical trainer from March to December, 2013, and added the role as a senior field supervisor from July 2014 to July 2015. The letters are vague when describing his duties, but are sufficient to show his work as a mechanical engineer. However, they do not indicate whether the Petitioner worked full-time during this period.

Another letter was submitted by the Vice President of [redacted] Venezuela), a company with a similar name to that of the company the Petitioner established in the United States, which states that he "rendered his services" as an engineering operations manager from October 2014 to October 2019. While this letter provides some detail regarding his duties, indicating that he developed and directed engineering projects related to several industries, it also does not indicate that this was full-time employment.

[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).

In addition, a letter from another Venezuelan company, [redacted] (CVM), states that the Petitioner worked as a mechatronic engineer "for over 4 years" until leaving in May 2019. It further indicates that during this period he trained technicians, conducted maintenance and repair of excavators, improved methods for assembling and disassembling computerized systems, and supervised mechanics and technicians. However, we note that this stated period of employment runs concurrent with the employment attributed to the Petitioner by the University [redacted] Venezuela, and it is therefore not apparent that he worked consistently or more than a few hours a week for any of these employers. Further, this employment was not noted in the Petitioner's CV, which was referred to when the Petitioner completed and signed Form ETA 750, Application for Alien Employment Certification, attesting to the truth and accuracy of its contents, including his employment history.

Due to the overlapping employment timeframes, lack of detailed descriptions of the Petitioner's work, and lack of explanation of the Petitioner's employment status and number of hours worked, we conclude that this evidence does not establish that the Petitioner acquired at least five years of progressive experience in his specialty from the date he earned his degree in July 2012 up to the date he filed his petition in December 2019. Although he submitted evidence of more recent work experience, eligibility for the requested classification must be established at the time of filing. 8 C.F.R. § 103.2(b)(1). We therefore disagree with the Director's decision in this matter and conclude that the Petitioner has not established his eligibility as a member of the professions holding an advanced degree. As he does not claim to be an individual of exceptional ability, he is not eligible for the underlying EB-2 immigrant classification.

B. National Interest Waiver

The Petitioner proposes to work as a project manager through his established Florida company, [redacted] US). In this role he plans to continue offering mechanical engineering services to U.S. companies, which includes planning and executing mechanical, electrical, and industrial projects.

The first prong of the *Dhanasar* analytical 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.

In his decision, the Director determined that the Petitioner's endeavor was of substantial merit, as supported by government and industry reports concerning manufacturing and supply chain issues in the United States. We agree that the evidence shows the substantial merit of the proposed endeavor in the area of business.

Turning to national importance, the Director first noted that the Petitioner did not submit evidence of the potential positive economic effect of [redacted] US on the local or regional economy, either through the creation of jobs or through revenue. In addition, he noted that reference letters in the record, particularly from one of the Petitioner's clients, [redacted], showed the impact to the company and its clients, but did not demonstrate a broader impact in the fields of mechanical engineering or

project management. Further, he acknowledged the evidence regarding issues in the manufacturing sector and the supply chain, but noted that the Petitioner's proposed endeavor was not sufficiently connected to a solution or impact on these issues. Based on this analysis, the Director concluded that the record did not establish the national importance of the Petitioner's proposed endeavor.

On appeal, the Petitioner asserts that the Director overlooked evidence in the record, and refers to evidence that [redacted] US continues to do business, such as annual tax returns for years after the petition was filed and emails with his clients. But the Petitioner does not adequately explain how this evidence supports the national importance of his proposed endeavor. To the contrary, it supports the Director's conclusion that the economic impact of [redacted] US is limited to its clients, and therefore does not have the broader implications required in *Dhanasar*.

The Petitioner also focuses on evidence of the U.S. government's actions taken in light of manufacturing and supply chain weaknesses that were exposed by the COVID 19 pandemic, and states that his proposed endeavor is "directly aligned" with recommendations made in government reports on this issue. Specifically, he asserts that since the focus of his proposed endeavor is to provide services to small and medium-sized companies in the manufacturing sector, he will help to decrease U.S. dependency on foreign imports. But as the Director stated, the evidence does not show how the Petitioner's work for his clients will potentially have broader implications for the manufacturing industry or address supply chain problems. Further, we note that the White House report included in the record, *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth,* focuses on particular industries such as semiconductor manufacturing, large capacity batteries, and pharmaceuticals, and the evidence does not show that the Petitioner will provide services to clients in these industries. It therefore does not show that his specific proposed endeavor, the focus of the analysis under the first prong of the *Dhanasar* analytical framework, is "directly aligned" with these stated government objectives as he claims.

In addition, the Petitioner notes that the author of the expert opinion letter also concluded that his endeavor is of national importance. However, in arriving at this conclusion, the letter makes projections that are unrelated to the Petitioner's proposed endeavor. For example, the author states that the Petitioner "will be asked to present at lectures, congresses, and seminars," and will thereby "distribute his knowledge to other professionals in the field." But in his statement submitted in response to the Director's request for evidence, in which he provided a detailed description of his proposed endeavor, the Petitioner does not state that he intends to give such presentations.

The author of this letter also opines that the Petitioner's proposed endeavor "has significant potential to employ U.S. workers and has other substantial positive economic effects." However, the Petitioner does not indicate that he intends to employ anyone other than himself. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. Where, as here, an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Id.*

For all of the reasons given above, we agree with the Director's conclusion that the Petitioner has not established that his proposed endeavor is of national importance. He therefore does not meet the first

prong of the *Dhanasar* analytical framework. 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 the Petitioner is well positioned to advance his endeavor and 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 that he qualifies as a member of the professions holding an advanced degree, and is therefore not eligible for the underlying EB-2 immigrant classification. In addition, he has not shown that his proposed endeavor is of national importance, so he is not eligible for a national interest waiver of the classification's job offer requirement.

ORDER: The appeal is dismissed.