U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11283672

Date: APR. 19, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> *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.
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> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> *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.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.

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[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *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 first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's 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.

The third prong requires the 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, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.[3]

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The record does not include an official academic record showing that the Petitioner meets the requirements of an advanced degree specified at 8 C.F.R. § 204.5(k)(3)(i)(A) or (B).[4] Accordingly, the

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The Petitioner submitted an academic evaluation from USA Evaluations stating that he has "satisfied requirements substantially similar to those required toward the completion of an Associate Degree in Business Administration from an accredited institution of higher education in the United States." This evaluation does not indicate that the Petitioner has "a foreign equivalent degree" to a United States advanced degree or a United States baccalaureate degree. In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a

Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner asserted that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. After reviewing the evidence, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

1. Evidentiary Criteria

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner did not claim to meet this criterion.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien 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)

As evidence of his ten years of entrepreneurial experience, the Petitioner presented a June 2017 letter from [redacted] an accountant with [redacted] stating that the Petitioner has served as "General Manager of [redacted] since 2010." The record also includes a "Fourth Contractual Alteration" for [redacted] a "Contractual Alteration of [redacted], and a "Power of Attorney" authorization for [redacted] This criterion, however, calls for "letter(s) from current of former employers." The aforementioned letter from the Petitioner's accountant, contractual alterations, and power of attorney authorization do not meet this requirement, nor do they indicate that the Petitioner's experience was "full-time." This documentation falls short in demonstrating that he has at least ten years of full-time experience as an entrepreneur.[5] Accordingly, the Petitioner has not established that he meets the requirements of this regulatory criterion.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner did not claim to meet this criterion.

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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).

[5] The Form I-140, Immigrant Petition for Alien Worker, in this matter was filed on January 10, 2018. The Petitioner, therefore, must demonstrate that he had at least ten years of full-time experience at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The June 2017 letter from [redacted] stated that the Petitioner "received in 2016 R$ 162.000,00 as dividends, in 2015 174.000,00 as dividends, in 2014 168.000,00 as dividends." To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of his claimed exceptional ability relative to others working in the field.[6] Here, the Petitioner has not offered documentation showing that his earnings are indicative of exceptional ability relative to others in his field. Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion.

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

The Petitioner contends that his membership in the Brazilian E-Commerce Association meets this criterion. As evidence for this criterion, the Petitioner provided a screenshot from the Brazilian E-Commerce Association's website identifying him as an [redacted]' This information is not sufficient to demonstrate that the Brazilian E-Commerce Association 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.[7] Accordingly, 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 recommendation letters from various colleagues discussing his business projects, but these letters are not sufficient to demonstrate his recognition for achievements and significant contributions to the industry or field. For example, [redacted] a former Administrative and Controlling Technician at [redacted] mentioned the Petitioner's work on projects involving [redacted] in the area of events, [redacted] and [redacted]." The record, however, does not include supporting documentation indicating that the Petitioner's work involving these projects has been recognized for significantly affecting the advertising industry or entrepreneurial field.[8] The evidence does not show that the Petitioner's work has had an impact beyond his employers, clientele, and their projects at a level indicative of achievements and significant contributions to the industry or field. For these reasons, the Petitioner has not established that he fulfills this criterion.

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[6] *See* USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 21 (Dec. 22, 2010), https://www.uscis.gov/legal-resources/policy-memoranda.

[7] 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."

[8] Formal recognition that is contemporaneous with the individual's claimed contributions and achievements may have more weight than letters prepared for the petition "recognizing" the individual's achievements. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 23.

For the reasons set forth above, the Petitioner has not shown that he meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii).

2. Comparable evidence

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) allows for the submission of "comparable evidence" if the above standards "do not readily apply to the beneficiary's occupation." A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. 204.5(k)(3)(ii) as well as why the evidence he has submitted is "comparable" to that required under 8 C.F.R. 204.5(k)(3)(ii).[9]

The Petitioner presented photographs relating to advertising campaigns and events in which he participated as other comparable evidence of eligibility, but he has not demonstrated that the standards at 8 C.F.R. § 204.5(k)(3)(ii) are not readily applicable to his occupation.[10] He has not sufficiently explained why he has not submitted evidence that would satisfy at least three of the six regulatory criteria. As such, the Petitioner has not shown that he may rely on comparable evidence.

In summary, 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) or meets the comparable evidence requirements at 8 C.F.R. § 204.5(k)(3)(iii), and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner stated that he intends to continue "working in the United states as an entrepreneur" and "opening up cross-border businesses." He asserted that his proposed endeavor involves providing "business intelligence consulting services in the area of international expansion, marketing and sales on behalf of U.S. corporations with the intention of doing business abroad, as well as promoting the investment of Brazilian companies in the American market."[11] The Petitioner further indicated that he plans "to manufacture the most easy-assemble compact elevators, at the best market price, in order to improve the quality of life of people with disabilities and

[9] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 22.

[10] "General assertions that any of the six objective criteria described in 8 CFR 204.5(k)(3)(ii) do not readily apply to the alien's occupation are not probative and should be discounted." *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 22.

[11] The Petitioner stated: "Since 2018, I have been the Owner and Executive Director of [redacted], a marketing, sales, and business development company registered in Florida, with the mission to establish cross-border transactions, and bring success to businesses in their trajectory to expand to the U.S." The record includes documentation relating to his formation of [redacted] such as the company's Articles of Organization, operating agreement, and tax forms.

present them a solution to move around in their homes."[12] He also explained that he plans to further develop his [redacted] partnership and expand its [redacted] education system."[13]

The record includes information about the economic and fiscal consequences of immigration, immigrant entrepreneurship as a driver of U.S. economic growth, the value of entrepreneurs to the global economy, and the entrepreneurial legacy of immigrants and their children. In addition, the Petitioner provided articles discussing immigrants' contribution to the U.S. economy, the value of foreign direct investment to our country's economy, international companies' contribution to U.S. jobs and economic growth, immigrant-founded billion-dollar startups, and the value of immigrant entrepreneurs to American prosperity. He also submitted information about entrepreneurs' involvement in promoting a more inclusive economy, foreign-owned companies as a source of U.S. employment, the benefits of international investment, foreign-born entrepreneurs as drivers of American innovation, and immigrants as economic contributors. The record therefore shows that the Petitioner's proposed work as an entrepreneur and business consultant has substantial merit.

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. 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.* We also stated 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.

In his appeal brief, the Petitioner argues that "he has nearly 25 years of experience working in, managing, and owning and co- owning companies in Brazil, and in the United States. . . . His experience and business acumen have been additionally developed by the very types of enterprises he owned throughout his career." The Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

Furthermore, the Petitioner asserts that his proposed endeavor stands to incentivize "the U.S. domestic job market" and "allow for direct and indirect job creation across the U.S." He claims that his undertaking "will produce significant national benefits, due to the ripple effects of his professional activities." The Petitioner also states that his "endeavor will contribute to tax revenue, prioritize the domestic job

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[12] The Petitioner presented a business plan he prepared for [redacted]." Regarding future staffing, his business plan anticipates that [redacted] will employ four personnel in years one through three. In addition, the plan offers revenue projections of $260,515 in year one, $562,716 in year two, and $2,672,902 in year three. The Petitioner, however, does not adequately explain how these staffing and revenue forecasts were calculated.

[13] The Petitioner contends that an educational system based on [redacted]) provides "more 'employability' to economically active people than 1) the model of schools with their traditional training courses 2) the corporate competence management model which most companies adopt." The record includes a business plan he prepared for [redacted]. Regarding future staffing, this business plan anticipates employing three personnel in years one through three. Additionally, the plan offers revenue projections of $837,337 in year one, $1,024,901 in year two, and $1,359,019 in year three. Again, the Petitioner does not adequately explain how these staffing and revenue forecasts were calculated.

market, and ultimately help increase the flow of money in the U.S. on a national level, which will contribute to U.S. gross domestic product (GDP)." Additionally, the Petitioner argues that his undertaking stands to affect the national economy by "[o]ffering economic convenience and agility," "[p]rioritizing the domestic job market," and "[d]riving competitive advantage for U.S. companies that wish to expand and internationalize their operations."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to expand his business operations and to offer consulting services to future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company, partnerships, and clientele to impact his field or the industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his projects' future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecasts for [redacted] and [redacted] indicate that these projects have growth potential, they do not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertakings would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that [redacted] and [redacted] will employ U.S. workers, he has not offered sufficient evidence that the area where they will operate is economically depressed, that he 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. Nor has the Petitioner demonstrated that any increases in employment or income attributable to [redacted]'s operations stand to substantially affect economic activity or tax revenue in Florida or nationally. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, 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 as a matter of discretion. 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.