U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17265942

Date: AUG. 5, 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 classification as an individual of exceptional ability in business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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.

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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion,[1] 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.

The first prong, regarding 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)

[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).

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.[2]

II. ANALYSIS

The Petitioner is the founder and chief executive officer of [redacted] which operates several [redacted] shops in Florida. His proposed endeavor entails the continued operation and expansion of this company. The Petitioner also established a mentorship program called [redacted]

Because the denial of the petition centered on the Petitioner's eligibility for the national interest waiver, our decision will focus primarily on that issue. But, first, there is an additional threshold issue that bears discussion.

A. Eligibility for the Underlying Classification

A foreign national may qualify for the immigrant classification in one of two ways: as an individual of exceptional ability in the sciences, arts, or business, or as a member of the professions holding an advanced degree. The Petitioner claims exceptional ability in business. The Director did not discuss this claim, stating, instead, that the Petitioner's foreign master's degree in foreign affairs qualifies him as a member of the professions holding an advanced degree. We do not agree with this determination.

While the record establishes that the Petitioner holds a master's degree, it is not sufficient to hold an advanced degree; one must also be a member of the professions. The regulation at 8 C.F.R. § 204.5(k)(2) defines a profession as one of the occupations listed in section 101(a)(32) of the Act (architects, engineers, lawyers, physicians, surgeons, and teachers), as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. The Petitioner does not claim or demonstrate that establishing a [redacted] business requires a baccalaureate degree, nor does he identify any mechanism that would prevent an individual without such a degree from starting such a business.

Given the above information, we withdraw the Director's determination that the Petitioner qualifies for classification as a member of the professions holding an advanced degree – a classification that the Petitioner did not seek. The Petitioner, instead, claimed exceptional ability in business. Because we will dismiss this appeal on other grounds, we will not discuss this issue in significant detail because further discussion would not affect the outcome of the appeal.[3] We will, however, briefly observe that the Petitioner has not established eligibility for this classification.

To establish 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). If the above standards do not readily apply to the individual's occupation, the petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii). The Petitioner claims to have submitted evidence under five of those categories, as discussed below.

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

[3] *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).

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 satisfies this criterion through his completion of two executive training courses at [redacted] Business School.

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)

The Petitioner claims over 25 years of experience, but does not document the full period. He submits letters attesting to his work with five employers between 2000 and 2013. The letters cover a period of more than ten years, but they do not establish full-time experience or show that all of the claimed employment was in the same occupation that the Petitioner now seeks in the United States. Umbrella terms such as "business" or "executive" do not establish that the Petitioner worked in the same occupation for all these employers. Instead, the letters refer to the Petitioner by various titles ranging from "strategic plan and marketing director" to "independent consultant."

Furthermore, letters attesting to qualifying experience must include the name, address, and title of the writer, and a specific description of the duties performed. *See* 8 C.F.R. § 204.5(g)(1). None of the submitted letters include all of the required information. The job descriptions tend to be vague, and none of the letters indicate that the employment was full-time. In this respect, we note that the claimed employment dates overlap in some instances. One letter, attesting to the Petitioner's claimed employment at [redacted] is from an individual who asserts that he used to work at [redacted] with the Petitioner, and who does not provide the required address.

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 Petitioner does not claim or establish that his U.S. remuneration establishes exceptional ability. Instead, he submits income tax documentation from Brazil, showing the following income in Brazil:

Year	Employer	Position (from letters)	Remuneration
2009	[redacted]	Strategic Plan & Marketing Director	R$393,113
2009	[redacted]	Consultant	R$57,771
2010	[redacted]	Chief Executive Officer	R$250,243
2011	[redacted]	Chief Executive Officer	R$200,763

The Petitioner submits private survey information showing the average "Business Consultant Salary" in Brazil is R$108,000. The identified employers' letters, however, do not indicate that the Petitioner worked as a consultant, except in the case of [redacted] which paid him slightly more than half the average figure that the Petitioner cites.

Furthermore, the Petitioner is not acting as a business consultant when he operates his own [redacted] shops, and therefore evidence of claimed exceptional ability as a business consultant is of questionable relevance with respect to his primary intended U.S. employment.

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

The regulations do not define the term, but several online dictionaries define a "professional association" as "a body of persons engaged in the same profession, formed usually to control entry into the profession, maintain standards, and represent the profession in discussions with other bodies."[4] An expansion of this definition reads:

> A professional association is a term used to describe a business that serves a single profession and requires a significant amount of education, training, or experience or a license or certificate from a state or private authority to practice the profession. It is an organization whose members belong to a particular profession that sets requirements for entry into and maintaining membership in that profession.[5]

The Petitioner documents his membership in the [redacted] Business School Alumni Association, the [redacted] Alumni Network, and the Florida United Businesses Association (FUBA). The Petitioner does not establish that any of these organizations is a professional association. The [redacted] and [redacted] associations are organized around prior attendance or employment at a particular institution, rather than common employment in specific profession or occupation. The record identifies FUBA as a lobbying organization that serves as an "advocate for small businesses." The Petitioner has not established that his occupation is a profession, or that the organizations to which he belongs serve a purpose comparable to a professional association.

> *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).

Two [redacted] clients provided letters praising the Petitioner's "immense wisdom" and his "unique and original" program, but the letters do not identify achievements or significant contributions to the industry or field (as opposed to assistance provided to individual clients). The Petitioner has not shown that letters from satisfied clients amount to qualifying recognition.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii).

B. 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. As outlined

[4] Examples include https://www.collinsdictionary.com/us/dictionary/english/professional-association (last visited July 29, 2021) and https://www.dictionary.com/browse/professional-association (last visited July 29, 2021).
[5] Source: https://definitions.uslegal.com/p/professional-association/ (last visited July 29, 2021).

below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

The Petitioner devotes four paragraphs of his initial statement to the issue of substantial merit and national importance. Two of those paragraphs concern the importance of science, technology, engineering, and mathematics (STEM) fields and education. The Petitioner contends that his "work is very math intensive, analyzing investment opportunities, financials, and costs." His assertions, however, do not persuade us that "running his successful [redacted] company" constitutes STEM employment. The minimal information that the Petitioner provides about [redacted] does not establish that the program has national importance. Its one-on-one mentorship structure inherently limits its direct impact to a very small number of clients; the record identifies two such individuals.

The third paragraph consists mostly of statistics and anecdotes concerning small businesses, and the fourth paragraph lists various cases in which we granted national interest waivers, at the appellate stage, to various business managers and entrepreneurs. None of the cited appellate decisions were published as precedent decisions, and the Petitioner did not provide enough information to permit an informed comparison between those cases and this one. Also, all of the cited decisions date from before the publication of *Dhanasar* in 2016, and therefore they were not approved under the *Dhanasar* framework.

General assertions about the aggregate importance of millions of U.S. small businesses do not establish the national importance of the Petitioner's proposed endeavor in particular. The specific individual instances that the Petitioner cites, such as Ford Motor Company and Wal-Mart, are not small businesses; the observation that they *began* as small businesses does not give weight to speculation that the Petitioner's small business may one day have a similar impact on the national economy.

In June 2020, the Director issued a request for evidence. The Petitioner's response includes IRS Forms W-2, Wage and Tax Statements, showing the following salary figures for [redacted]:

Year	Employees	Lowest	Median	Highest	Total
2015	17	$284	$3581	$87,692	$194,629
2016	15	165	2566	62,538	114,221
2017	31	36	1151	70,385	141,730
2018	13	37	108	74,000	136,473
2019	7	1118	20,307	75,308	163,191

The above figures represent the total number of people whom the company employed over the course of the calendar year; they do not show that the company employed that many people at any one time. Each year, between one and four employees earned amounts that exceeded a year's full-time pay at minimum wage.[6] The company's production manager, who is also the Petitioner's spouse, is the only person to consistently earn a full-time salary at [redacted]; her salary has ranged from $34,615 to $75,308 per year. The highest total annual salary figure is from 2015, largely because of the nearly $88,000 paid to the Petitioner – a figure considerably higher than the Petitioner's total salary over all subsequent years.

[6] Florida's minimum hourly wage was $8.05 in 2015 and 2016; $8.10 in 2017; $8.25 in 2018; and $8.56 in 2019. Source: https://www.dol.gov/agencies/whd/state/minimum-wage/history (last visited July 29, 2021).

The above figures do not indicate that [redacted] has national importance in economic terms.

The Petitioner's response to the request for evidence also includes a newly-drafted business plan for [redacted].[7] The plan states that "the Company plans to employ fifty (50) full-time positions by the end of Year 1. By the end of Year 5, the Company will have increased its total staff to two hundred nine (209) positions." When the business plan was prepared in 2020, the company had 12 current employees and had been operating for several years. Furthermore, the plan states that the company took in $678,297 in revenue in 2019, but "is projecting sales of $2,049,210.00 in Year 1, and $13,042,114.00 in Year 5." As shown above, the company's annual payroll never exceeded $200,000 between 2015 and 2019, but the business plan projects $1,220,640 in salaries during "Year 1." Thus, the business plan assumes that the company would more than triple its revenue, quadruple its staff, and increase its payroll more than sevenfold within one year. The plan does not explain the basis for or provide documentation supporting these projections for a rate of growth that would substantially exceed the company's historical performance.

The Petitioner submits evidence showing negotiations to lease retail space at shopping malls and other locations, and that other retailers have licensed the [redacted] name to sell the company's products, but the Petitioner does not establish that this activity occurs at a nationally important scale, or has produced significant employment or other economic benefits.

In denying the petition, the Director determined that the Petitioner did not submit "evidence . . . demonstrating how the proposed endeavor will expand beyond the petitioner's own company as well as rise to the level of . . . national importance." The Director acknowledged that the business plan projected "significant growth," but concluded that the record does not substantiate the figures provided in that plan.

On appeal, the Petitioner quotes at length from the previously submitted business plan, stating that the Petitioner's "plans to expand [redacted] through a licensed store model will . . . have a broader ripple effect on the economy." In *Dhanasar*, we stated: "In determining whether the proposed endeavor has national importance, we consider its potential prospective impact." *Id.* at 889. Here, the Petitioner has shown that [redacted] executed a small number of licensing agreements, but he has not established the impact of those agreements. The Petitioner has not shown that the figures in the business plan are based on anything other than highly optimistic speculation, assuming rates of growth far beyond what the company has actually shown between 2015 and 2019.

The business plan is useful as an explanation of the Petitioner's plans and intentions, but it is not evidence of the proposed endeavor's significance or importance. Unsubstantiated assertions do not take on greater weight when presented in the form of a business plan.

The Petitioner states that the Director disregarded "probative letters of support from several prestigious companies." The cited letters, however, do not mention [redacted], let alone establish the national importance of the proposed endeavor. Two of the letters are from [redacted] clients, who praise the Petitioner's mentorship but do not establish the wider economic impact of that assistance.

[7] The plan cites references from August 2020, indicating that it was drafted shortly before its submission in September.

One letter, addressed to the Petitioner, welcomes [redacted] to FUBA and describes membership benefits. The remaining letters attest to the Petitioner's earlier employment with various foreign companies. The Petitioner specifically asserts that these letters establish the national importance of the proposed endeavor, but the Petitioner does not explain how any of these letters relate to the proposed endeavor at all.

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. Because this issue is dispositive of the Petitioner's appeal, we decline to reach, and hereby reserve, the appellate arguments regarding the remaining issues.

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion. We further conclude that the Petitioner has not established eligibility for the underlying immigrant classification. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.