U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 15775618

Date: AUG. 06, 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 information and communications technology (ICT) consultant and professor, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Texas Service Center Director concluded that the Petitioner qualified for classification as an advanced degree professional and that his proposed endeavor had substantial merit. However, the Director concluded that the evidence did not establish that the endeavor is of national importance, that the Petitioner is well positioned to advance the endeavor, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner offers a brief and reasserts that he qualifies for a national interest waiver. 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. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), 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.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

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, 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.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner did not provide a U.S. academic equivalency evaluation in accordance with 8 C.F.R. § 204.5(k)(3)(i)(A) to establish the U.S. equivalency of his foreign master's degree in communications management.[4] However, the Director overlooked this lack of compliance with 8 C.F.R. § 204.5(k)(3)(i)(A) and reviewed the AACRAO EDGE database to determine that the Petitioner's foreign degree is comparable to a U.S. master's degree. As the database is a credible resource in this regard, we will not disturb the Director's finding concerning the Petitioner's degree.[5]

In Part 6 of the Form I-140, "Basic Information About the Proposed Employment," the Petitioner listed his position as "ICT Consultant and Professor" and indicated that his position is full-time. He described the duties on the I-140 as "[a]dvance wireless device regulation compliance through teaching, publications, consulting, and expansion of regulatory compliance business." On his ETA 750 Part B, he claimed to hold three positions while also pursuing a Ph.D.: (1) owner of two Nigerian-based companies focused on the development of [redacted] and ITC;[6] (2) Assistant Professor of IT at [redacted] University [redacted] in Louisiana; and (3) Assistant Professor of ICT at the [redacted] University (online). He did not identify how many hours per week he devotes to each position or to his Ph.D. studies.

Although the initial filing contained significant information regarding the Petitioner's past work, in addition to some of his current work, he provided very little information concerning his proposed endeavor. From the initial filing alone, we understand the Petitioner's endeavor will involve applying his knowledge of ICT to classroom settings, continuing to serve as an Assistant Professor at [redacted]

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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).
[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] The record includes a Canadian academic equivalency evaluation, which has no bearing on U.S. academic equivalency. The Petitioner should be prepared to address this evidentiary shortcoming in any future filings.
[5] The record does not contain screenshots or printouts from the database to evidence the equivalency. However, the database states that a Master of Arts, Science, Engineering, Literature, Business Administration, Letters in the United Kingdom represents "attainment of a level of education comparable to a master's degree in the United States." For more information, see https://www.aacrao.org/edge/country/credentials/credential/united-kingdom/master-of-(ii)-arts-science-engineering-literature-business-administration-letters (last visited Aug. 6, 2021).
[6] Here, we presume the Petitioner means "ICT" and that "ITC" is a typographical error. The record also indicates that the Petitioner has a third company registered in the United States as an LLC.

University, and continuing his dual-faceted endeavor of wireless device regulatory compliance and expanding telecommunications in academia. The Director issued a request for evidence (RFE) concerning the Petitioner's proposed endeavor, among other eligibility requirements. The RFE informed the Petitioner that the evidence was insufficient to determine whether the endeavor had substantial merit and national importance and also noted that the Petitioner had not identified how much time he would devote to his various IT consulting, business operations, and teaching activities.

In his RFE response, the Petitioner submitted a five-year plan containing additional information concerning his proposed endeavor. Specifically, he stated that he intends to use his "technology expertise and business acumen to reduce the friction of technology access and integration challenges within the State by starting a wireless product and ITE [information technology equipment] testing laboratory and obtain the necessary Federal government accreditation and licenses." He further stated that his five-year plan will "merge [his] skills and goals as an ICT consultant, entrepreneur, and assistant (or adjunct) professor." He intends to "engage in STEM [science, technology, engineering, mathematics]-based community training for inner city and under-served youngsters" which will involve devoting "a section of the wireless testing laboratory [to] optical technology training for young technology and engineering professionals."

The Petitioner stated that his work as an ICT consultant and entrepreneur is full-time and ongoing, and that his adjunct or assistant professor work would likely consist of one class per school year, for an average of six hours per week of work. Counsel stated that the Petitioner's professorial positions have always been part-time, that his work with his Nigerian-based companies has been part-time since 2015, and that the Petitioner "will serve first and foremost as a consultant, where his day-to-day work will be similar to that of an academic researcher." While helpful, "part-time" is a general term that does not adequately convey how much time he will devote to each of his activities. Counsel has noted that his teaching and Nigerian business operations work has been part-time in the past, but we have little information concerning the Petitioner's intended future allocations of time or how his day-to-day work will be similar to that of an academic researcher, particularly if he works full-time as both an ICT consultant and entrepreneur. We further note that the Petitioner did not account for the time he would devote to other claimed activities, such as publishing and pursuing his Ph.D. program, nor did he specifically identify where he would be teaching, such as at [ ] University, [ ] University, or another academic institution. In addition, the Petitioner did not identify how much time he would spend training students in STEM and optical technologies versus how much time he would spend offering compliance and regulatory consulting services to private businesses, nor can we determine whether the training is part of his teaching work or his entrepreneurial work. In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. at 889. As the record remains unclear as to how he will allocate his time, we conclude that he has not adequately identified his proposed endeavor, which inhibits a finding of eligibility in accordance with Dhanasar.

The record supports the Director's determination that the Petitioner's proposed endeavor has substantial merit. For example, the record includes information concerning the importance of wireless technology, its applications in emerging markets, and the health and safety reasons for regulating it. 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. In determining national importance, the relevant question is not the importance of the industry or profession in which

the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake."[7] 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.

The Petitioner argues that his regulatory and compliance consulting allows businesses to improve their products so that they are eligible to be sold in other countries and that this has national importance because it increases U.S. competitiveness by enabling U.S. companies to broaden their markets. According to the Petitioner, his regulatory and compliance work will boost U.S. manufacturing because it will lead to the creation of more products that meet compliance standards. Further, he claims that the resulting boost in manufacturing has the potential to create U.S. manufacturing jobs. In addition, his business will provide technology jobs in Louisiana that will boost economic growth, while his teaching and training will stimulate entrepreneurial growth across all sectors in Louisiana. The Petitioner also claims that his research work will impact the health sector and insecure communities because of its application to telemedicine, electronic medical records, and mobile security for homes.[8] Overall, the Petitioner claims that his expertise will help increase the market of U.S. manufacturers, which benefits individual companies but also positively affects the U.S. gross domestic product (GDP) as a whole.

While we acknowledge the Petitioner's claims, he has not provided sufficient evidence to substantiate them. The record does not show that the Petitioner's proposed endeavor stands to extend beyond his own clients and students such that it would impact the field or industry, the State of Louisiana, or the nation more broadly. The Petitioner has not shown that the benefits to the regional or national economy resulting from his entrepreneurial and consulting work would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. For instance, he has offered no analysis or numerical breakdowns to substantiate how his work is tied to increased positive economic activity or market expansion. The record does not indicate that his entrepreneurial and consulting business would be of a size or income level that would suggest the ability to generate substantial positive economic effects. While he claims to consult, provide recommendations, and offer directions to companies, he has not provided concrete examples of this work within the United States, as opposed to his past work performed outside the United States. Although he provided evidence of a Nigerian sales and installation license issued to his Nigerian-based business, he has not explained how such a license, which was issued to a foreign business, would enable him to personally offer regulatory and compliance consulting services in the United States. This may explain why the Petitioner has named

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[7] While we acknowledge reports and articles on the benefits of technology to the economy, the fast-growing nature of the field, the opportunities in emerging markets, as well as the importance of regulatory and compliance work, these reports and articles are insufficient to substantiate the Petitioner's claims concerning the national importance of his proposed endeavor because they do not speak to the specific impact of the Petitioner's work.

[8] The record does not contain sufficient explanation of what the Petitioner has done to contribute in these areas. For instance, the evidence provided suggests that he developed software for electronic medical records, but we do not know what the software does, how it differs from other software used for the same purposes, or whether other entities use his software. We have little information about the impact the Petitioner's software has had on the field of healthcare as a whole.

few current or future consulting engagements, much less offered evidence to substantiate their existence.[9]

To further illustrate, he has not identified the specific products upon which he plans to offer regulatory and compliance consulting, nor has he offered evidence of a direct connection between his services and a boost in his clients' product sales. Even if provided, we would have little basis with which to conclude that any of those sales are of such a magnitude as to affect manufacturing, jobs, the economy, or the GDP. Even if the Petitioner had established that his clients experienced a boost in sales as a result of his consulting services, this would not automatically translate to a manufacturing or job creation boost. Furthermore, the record does not show that any claimed manufacturing and job expansion would extend beyond the individual companies he assisted or that the expansion would remain in the United States, as opposed to being exported overseas.

With respect to the Petitioner's teaching and training duties, we conclude that while these endeavors do have substantial merit, the record does not establish by a preponderance of the evidence that they would impact the field of ICT, as opposed to being limited to the specific students, young professionals, and workplaces he serves. For example, the Petitioner has not included evidence of how many people he will teach and train, how many have secured or will secure entrepreneurial or technology industry jobs, or an analytical breakdown of the business growth that this work will cause such that it would impact the economy of Louisiana or the nation. Here, the Petitioner's teaching and training roles may impact the students and young professionals where he works, but he has not established how these activities have a broader impact. Similarly, 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.

While we acknowledge the Petitioner has presented at conferences and published articles in the past, he has not indicated that his ideas and teachings have been implemented such that the broader impact of his work is established, nor has he identified whether these activities are a part of his proposed endeavor.[10] The Petitioner submitted numerous letters of recommendation in which the authors praise the Petitioner's qualifications, expertise, and work product.[11] Most of the authors focus on the Petitioner's past work and appear to have little knowledge concerning his proposed endeavor.[12] Many authors appear to assume that because the Petitioner's work benefitted his individual employers and clients, that these benefits accrue to the nation or the field as a whole. For instance, [redacted] offered an illustration of how the Petitioner's services increased his company's competitiveness. Without explaining how the Petitioner had any impact beyond this specific company, [redacted] nevertheless concluded that the Petitioner is of great value to the industry and the United States. Similarly, as the Director noted, [redacted] stated that the Petitioner has "done pioneering work

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[9] As stated in his RFE response, the Petitioner plans to obtain the necessary federal licensing and accreditation. The record indicates that the Federal Communications Commission (FCC) issues regulatory and compliance licenses but not that the Petitioner possesses one.

[10] We have insufficient evidence of the Petitioner's citation record at the time of filing the petition. In response to the RFE, the Petitioner submitted evidence that three of his articles published in 2017 were collectively cited a total of eight times.

[11] While we do not discuss each piece of evidence or each recommendation letter individually, we have reviewed and considered each one.

[12] We acknowledge the Petitioner submitted additional letters after the petition was filed and that the authors of the newly submitted letters demonstrate increased knowledge of the proposed endeavor.

with manufacturers in educating and lecturing them" on certification and testing requirements, but [redacted] did not identify, for example, which or how many manufacturers benefitted, how the Petitioner's work differed from other regulatory and compliance consulting work, or whether others in the industry have adopted the Petitioner's methods. Therefore, the letter does not support a finding that the Petitioner's work had a pioneering impact on the field. Some of the authors abstractly reference the Petitioner's influence on the telemedicine field, but they do not explain the Petitioner's precise role in it or how the telemedicine field has changed because of the Petitioner's work. Overall, few authors substantiate their claims of the Petitioner's impact to the field or industry.

On appeal, the Petitioner argues that the Director selectively pulled phrases from the record but ignored the full context and data within the record. In our review, we conclude that the Director cited several discrete examples to illustrate the record's evidentiary shortcomings as a whole. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner has not met his burden in this regard. Because the documentation in the record does not establish that the Petitioner's proposed endeavor is of national importance 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.[13]

III. CONCLUSION

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.

[13] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments regarding prongs two and three of the Dhanasar framework. 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).