U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19499548

Date: NOV. 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, a chief executive, 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 Director of the Texas Service Center determined that the Petitioner qualifies for the underlying classification and that his proposed endeavor has substantial merit. Nevertheless, the Director denied the petition, concluding that the evidence did not establish that the proposed endeavor is of national importance, that he is well positioned to advance his endeavor, or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts his eligibility, arguing that the Director did not properly weigh the evidence and erred in the decision.

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). 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). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. 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). As a matter of discretion, the national interest waiver may be granted 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. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. Advanced Degree

The Petitioner did not assert and the Director did not analyze the Petitioner's eligibility as an individual of exceptional ability. The Director concluded that the Petitioner qualifies for the underlying classification as a professional 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 [individual] 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 [individual] 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 [individual] 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 contains evidence that the Petitioner attended a university in Spain and earned a four-year degree in information technology (IT) in 1990. In addition, he completed several foreign certificate programs, including those in integrated project management, management training, and management improvement. Each program's duration ranged from six to eight months. Although the Petitioner asserts that the foreign management improvement certificate program, which he attended from April to December 2008, resulted in the award of a master's degree in business administration, the record does not support this claim. The Petitioner did not submit transcripts to accompany his certificate in management improvement and it is not apparent from the record how a certificate program in management improvement could be considered a master's degree program.

In support of the U.S. equivalency of his education, the Petitioner submitted an evaluation from [redacted], a professor at the [redacted] College [redacted] Because USCIS does not accept equivalency evaluations of experience, we consider and analyze the academic

equivalency portion of the evaluation only. We further acknowlege an advisory opinion of the Petitioner's eligibility under the national interest waiver framework, which the Petitioner also obtained from [redacted] This advisory opinion does not not analyze the Petitioner's foreign education and therefore is not probative of its U.S. equivalency.

In considering the academic portion of the [redacted]'s evaulation, we observe that it largely contains templated language found in numerous evaluations provided by other evaluation service providers and submitted on behalf of other petitioners. The only information specific to the Petitioner's education appear to be the titles of his academic programs and the names of his universities. Although [redacted] states that the courses completed and the number of credit hours earned indicate the equivalency of the Petitioner's education, [redacted] offers little explanation of the Petitioner's courses and credit hours and does not explain how they are the equivalent of a U.S. education. His generalized conclusions are insufficient to establish the U.S. equivalency of the Petitioner's education. Although [redacted] references the Petitioner's transcripts, the record contains only the Petitioner's transcripts for his four-year IT degree. The Petitioner has not submitted transcripts for any of his certificate programs and we therefore question the basis upon which [redacted] draws his conclusions. Additionally, we question [redacted]'s knowledge of the Spanish academic system and how his qualifications as a professor in the United States enable him to credibly opine on the equivalency of Spanish academic degrees. For these reasons, we conclude that this evaluation is of little probative value in this matter.

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Id. Here, the evaluator does not demonstrate specific knowledge of the Spanish education system, the Petitioner's specific university, or how his credit hours, grades, and the content of his courses translate to a U.S. education. Nor does the evaulator offer sufficient analysis or support for the conclusions contained in the evaluation. As such, we conclude that this evaluation is insufficient to establish the academic equivalency of the Petitioner's foreign education.

Even if we accepted that the Petitioner earned the equivalent of a U.S. bachelor's degree in IT, the evidence would still be insufficient to qualify the Petitioner as an advanced degree profressional in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). The requlation requires that post-baccalaureate experience be documented in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive experience in the specialty. The record contains a letter from the Petitioner's former employer, [redacted] which indicates that the Petitioner worked for [redacted] from August 1, 1998 to September 4, 2015. The letter further states that the Petitioner occupied the position of Deputy Executive Vice President, responsible for the energy, telecommunications, and media markets, and that in April 2010, the Petitioner transitioned to the role of Executive Vice President of international business. The letter does not discuss the Petitioner's work duties, responsibilities, or training and as such, it is difficult to conclude that the work was progressive in nature based upon the Petitioner's position titles alone. While it is clear that the Petitioner has more than five years of post-baccalaureate experience, the record is insufficient to conclude that the experience was progressive in nature. Therefore, we cannot conclude that the evidence provided complies with the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B).

As the record does not establish the U.S. equivalency of the Petitioner's foreign education, nor does it establish the progressive nature of the Petitioner's post-baccalaureate experience, we withdraw the Director's finding that the Petitioner has established that he qualifies as a member of the professions holding an advanced degree. Instead, we conclude that the Petitioner has not met his burden in this regard.

B. National Importance

As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. While this shortcoming alone merits the dismissal of the Petitioner's appeal, we nevertheless examine the issue of whether he has established the national importance of his proposed endeavor. For the following reasons, we agree with the Director that the evidence does not establish the Petitioner's eligibility in this regard. Although we do not discuss each piece of evidence individually, we have reviewed and considered each one.

In the initial filing, the Petitioner stated on his Form I-140 that as a chief executive, he will "[d]etermine and formulate policies and provide overall direction of companies or public and private sector organizations." He described his proposed endeavor as advancing his career as a chief executive in the IT consulting industry where he will plan, direct, and coordinate the operations of companies and develop international business activities by promoting cross-border projects and transactions. The Petitioner further stated that he "intends to apply his intimate knowledge of IT and [profit and loss] analysis, business administration, consulting and the Defense and Traffic & Transport markets to directly help companies in the United States develop better strategies and practices, and improve their global market reach, which will consequently benefit this U.S economy." The Petitioner provided numerous assertions concerning the national importance of his proposed endeavor, including that it will enhance the business capabilities of U.S. companies doing business on a global scale; facilitate cross-border transactions; increase economic activity; generate jobs and tax revenue; as well as optimize company effectiveness, efficiency, and compliance with cross-border laws and industry regulations.

The Director issued a request for evidence (RFE), notifying the Petitioner that he had not established, among other things, that the proposed endeavor has national importance. The Director specifically noted that the evidence suggested that the proposed endeavor would impact the Petitioner's prospective employers and customers but not the IT field or the nation as a whole. In response, the Petitioner added that he is currently working on expanding the operations of his Florida-based IT consulting company [redacted] He also asserted that he serves as the CEO of [redacted] [redacted], a [redacted] data center with headquarters in Spain. As CEO of [redacted] the Petitioner plans to expand [redacted] data centers into the United States, particularly in the Florida region. He claimed that the expansion of [redacted] into the United States will enable him to improve U.S. business productivity and to maximize economic capacities, as well as to bring stability, growth, and productivity to all U.S. companies that employ [redacted]'s services. Regarding the broader impact of his proposed endeavor, the Petitioner explained that the endeavor would impact more than just [redacted]'s served companies, but also has the potential to reach the clients, employees, and affiliates of [redacted]'s globally located client companies. The Petitioner asserted that this would enhance the

business ecosystem because IT plays a central role in meeting national and international business demands.

Although the Petitioner provided an RFE response, the Director ultimately determined that the evidence was insufficient to establish the national importance of the proposed endeavor because the evidence did not convey that the Petitioner's proposed activities would have a broader impact. The Director acknowledged the Petitioner's claims of impact to the economy but determined that the claims were not supported by independent and objective evidence. We agree.

In support of his arguments, the Petitioner submitted numerous industry articles and reports; however, as these articles do not discuss or address the proposed endeavor, they offer little to aid our analysis. 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." See Dhanasar, 26 I&N Dec. at 889. Although the fields of IT and business are important, the Petitioner has not offered sufficient or persuasive evidence of how his proposed endeavor is nationally important, as opposed to the fields in general.

The Petitioner initially described his proposed endeavor as advancing his own career, which does not suggest that its impact would be nationally important. The Petitioner went on to explain that his proposed endeavor has national importance because of "the ripple effects it generates upon the U.S. business industry, which is experiencing a growing shortage of IT professionals, coupled with an intensive demand for tech-centered services." However, the "ripple effects" the proposed endeavor would generate are not well explained or documented in the record, nor has the Petitioner sufficiently connected the proposed endeavor's activities to any specific ripple effects. Although he claimed to have technological innovations that would directly improve the U.S. economy by enhancing productivity, operations, and revenue of businesses through the country, the Petitioner did not explain what his innovations are, how they are different from what is already available in the IT field, or how the benefits of these innovations would accrue to companies that do not directly recruit the Petitioner's services. Similarly, the Petitioner's arguments that the proposed endeavor has national importance due to the shortage of IT workers is not persuasive. Here, the Petitioner has not offered sufficient evidence to establish that his proposed endeavor would impact or significantly reduce the claimed national shortage.

The Petitioner highlighted his past successes in order to suggest that his proposed endeavor will make a similar impact. He asserted that through the IT projects he led for major companies, he significantly contributed to the economy and that his "spearheaded IT initiatives" have been adapted into the national and global marketplace. However, he has not provided sufficient details concerning what projects or initiatives he led, nor has he offered corroborative evidence to substantiate the claimed results of significant economic contributions or changes within the marketplace or IT field. The Petitioner claimed that his experience has transformed the IT field, as well as that he designed, developed, and implemented IT structures that allowed companies to achieve consistent revenue growth, improved performance, reduced costs, and increased customer satisfaction. While this may be true, the Petitioner has not offered sufficient evidence of how he has transformed the IT field or how the achievements he facilitated have extended beyond his employer and the client companies that engaged his services.

Regarding his Florida-based business, the Petitioner has not explained how he will create a revenue stream so substantial as to affect the national economy or generate tax revenue, nor has he demonstrated how his assistance to U.S. companies will be on such a scale as to impact the national economy. Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers. Evidence in the record suggests that earned about $25,000 in 2017 and operated at a loss. Additionally, Florida business records indicate that is inactive and administratively dissolved for not filing an annual report in 2020. While the Petitioner claimed that he will allow U.S. companies to expand into foreign markets and that he can secure their success, he has not provided details concerning how he would do this or identified any U.S. companies seeking his business or looking to expand into Europe, Brazil, or other parts of Latin America. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's business would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Accordingly, the Petitioner has not established how his proposed endeavor activities as a CEO or those involving would have national importance.

Regarding the Director noted in the decision that the Petitioner's position with began after the filing of the petition and that does not appear to be a registered business operating in any U.S. state. As this business opportunity materialized after the filing of the petition and therefore would not establish the Petitioner's eligibility at the time of filing, we conclude that it does not assist the Petitioner in establishing the national importance of the proposed endeavor. Furthermore, the lack of operating status in the United States suggests that the Petitioner's work as CEO for is not currently a viable proposed endeavor activity. Even if U.S. operating status were established, the Petitioner has not explained what his role as a CEO entails such that we can understand his proposed endeavor activities of expanding data centers and business in the United States. Although the Petitioner claimed that he will enhance the U.S. business ecosystem, he has not explained what this means or how he will do it. Moreover, it is not apparent how providing data center infrastructure to the specific clients and companies that choose to contract with would have national importance. In Dhanasar, we 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. at 889. We acknowledge the Petitioner's explanation that this activity would impact more than just 's served companies by potentially reaching the clients, employees, and affiliates of 's globally located client companies; however, the Petitioner has not offered sufficient evidence or explanation to substantiate this assertion.

The Petitioner submitted numerous recommendation letters, many of which were authored by colleagues or clients known to him from his prior employment positions with The authors praise the Petitioner's personal and professional qualifications and set forth generalized examples of the value he offered in various business endeavors. However, none of the authors demonstrate knowledge of the Petitioner's proposed endeavor, nor do they assert that the Petitioner's accomplishments and contributions extended beyond his specific employer and clients. Accordingly, we conclude that these letters offer little probative value in this matter. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. See 1756, Inc. v. *U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the

petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

Similar to the authors of the recommendation letters, the Petitioner repeatedly referenced his experience, expertise, and knowledge concerning IT and business as the reason he will be able to provide nationally important benefits to the United States. However, the Petitioner's personal and professional qualifications 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 the Petitioner proposes to undertake has national importance under Dhanasar's first prong.

Returning to 's advisory opinion letter, we note that his analysis concerning national importance hinges upon the existence of cross-border business, but provides little discussion of how the proposed endeavor would actually incorporate any cross-border activity. The Petitioner has not identified any U.S. companies that have contracts with him, his business, or his employer, nor has he established that he works with any specific U.S. companies that have interest in cultivating cross-border business. As has offered little reasoning for why, apart from cross-border activity, the endeavor would have national importance, his opinion is of little probative value in the analysis of the Petitioner's eligibility under the first prong of the Dhanasar framework. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id.

On appeal, the Petitioner relies primarily upon his prior arguments and the evidence he previously submitted to reassert his eligibility. We acknowledge the printouts from 's website, which feature both the Petitioner as CEO and the company's claimed operations in the United States; however, this evidence does not address the numerous shortcomings we previously identified concerning the Petitioner's proposed endeavor activities with The Petitioner argues on appeal that his proposed endeavor will significantly impact the economy. While IT and business consulting are important, the Petitioner has not offered a sufficient connection between his activities as a chief executive and a corresponding impact on the economy. Therefore, the Petitioner's claims have not been substantiated.

Upon a review of the evidence in its totality, we conclude that the Petitioner's proposed work does not meet the first prong of the Dhanasar framework. The Petitioner has not offered sufficient evidence to support his claims that the endeavor has national importance. 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.

As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments regarding the other Dhanasar prongs. 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).

III. CONCLUSION

The Petitioner has not established that he qualifies for the underlying classification as a member of the professions holding an advanced degree. In addition, the Petitioner has not met the requisite first prong of the Dhanasar analytical framework. Accordingly, 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.

ORDER: The appeal is dismissed.