U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28448919

Date: OCT. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a computer network architect, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding the record did not establish the Petitioner's eligibility under any of the three Dhanasar prongs. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] We will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[3], grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. EB-2 Classification

The Director did not analyze the Petitioner's eligibility for the underlying EB-2 classification. The Petitioner asserted he is an individual of exceptional ability and meets at least three of the six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii).[4] Upon de novo review, we conclude the Petitioner has not established eligibility as an individual of exceptional ability and therefore he has not established eligibility for the underlying EB-2 classification. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

> 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 evidence indicates the Petitioner earned a foreign título de Bacharel in Systems Analysis. Therefore, he has established eligibility under this criterion.

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[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] 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).

[4] The Petitioner stated that he is "a member of the professions holding an Exceptional Ability . . ." (emphasis in original). The record includes evidence that the Petitioner earned the foreign equivalent of a U.S. bachelor's degree, but it does not support a finding that he earned an advanced degree. Furthermore, the Petitioner has not provided employer letters in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B), as the letters do not contain exact employment dates nor demonstrate how the Petitioner's work experience was progressive in nature. Therefore, we will only analyze his eligibility for the EB-2 classification as an individual of exceptional ability.

> 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 provided his résumé, which includes his employment history, and he submitted letters of recommendation from former colleagues to corroborate his past employment in various positions. Some of the authors do not clearly establish their authority to write on the companies' behalf or how they possess knowledge of a particular company's employee records. More importantly, the letters do not contain exact dates for the Petitioner's employment. Although most authors state the year when they first met the Petitioner or started working with him, they do not state when exactly the Petitioner's employment began and ended, or whether the Petitioner worked full-time for the employer. As the letters do not show, individually or collectively, that the Petitioner has at least ten years of full-time experience in the occupation, we conclude the Petitioner has not established his eligibility under this 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 acknowledged that practicing his profession does not generally require a license. To support his eligibility under this criterion, the Petitioner provided CISCO completion certificates for courses on various topics, such as cybersecurity. However, training course completions do not establish the Petitioner has a license to practice the profession or a certification for a particular occupation. The record indicates the Petitioner has practiced his profession since earning his título de Bacharel in 2005; however, the certificates state the Petitioner completed the CISCO courses in 2020. As such, the training course certifications appear to have little bearing on his qualifications or ability to practice his profession, given that the Petitioner earned them about 15 years after already beginning his profession. Therefore, the evidence does not establish the Petitioner meets this criterion.

> 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 did not submit evidence for consideration under this criterion.

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

The Petitioner stated that he belongs to a [redacted] labor union. Although the Petitioner listed the website address of the labor union and his identification number, the record does not include any actual evidence of membership, such as photocopies of membership certificates or website screenshots confirming membership. It is the Petitioner's burden to provide evidence to support his eligibility for the requested benefit and it is not incumbent upon USCIS to search foreign websites on the Petitioner's behalf. Moreover, the Petitioner has not submitted evidence to establish what the union membership requirements are, such that we could determine whether the labor union is a professional association. Accordingly, the evidence does not establish the Petitioner's eligibility under 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)

The authors of the recommendation letters praise the results the Petitioner achieved for individual companies and clients, as well as his contributions to the success of particular projects. While we acknowledge these claims, none of the authors identify any specific contributions the Petitioner made to the information technology (IT) field. Although the Petitioner mentions he won an award, he provided little evidence of receipt of the award or any explanation of how it constitutes recognition for achievements and significant contributions to the industry or field. We reviewed all documents in the record and do not find sufficient support for a conclusion that the Petitioner has recognition for achievements and significant contributions to the industry or field. Accordingly, the Petitioner has not established eligibility under this criterion.

Summary of Exceptional Ability Determination

The record does not support a finding that the Petitioner met at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Rather, we conclude that the evidence supports a finding of eligibility under only one criterion. Therefore, the Petitioner has not established his eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As the Petitioner has satisfied only one criterion, a final merits determination is not required.

B. The National Importance of the Proposed Endeavor

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Dhanasar, 26 I&N Dec. at 889.

The Petitioner intends to open his own company, [redacted] which specializes in providing advice and consultancy services on information technology (IT) matters, including cybersecurity and computer networking. The Director determined the Petitioner's endeavor has substantial merit. While the Petitioner provided details regarding his planned employment, the evidence does not establish the national importance of the endeavor. Specifically, the Petitioner has not demonstrated that the benefit of his services will extend beyond his company and those who engage him for his services. Further, he submitted little evidence to establish how his specific endeavor would influence the IT field or otherwise impact the nation. For instance, the record does not reflect that his services are different, better, or cost less than other IT services, nor has he presented evidence to establish his services would be available on a scale that rises to the level of national importance.

The Petitioner referenced the relevance of IT and Science, Technology, Engineering, and Mathematics (STEM) fields, the monetary value of the IT industry, its growth potential, and the importance of IT work to the nation's economy. We acknowledge the importance of IT and STEM fields, as well as the importance of immigrant entrepreneurs and small businesses; however, the Petitioner has not

sufficiently explained how his work in computer networking and cybersecurity would produce an impact rising to the level of national importance.

We reviewed the Petitioner's business plan in which he described his vision, mission, and the services he will provide. The Petitioner provided an overview of sustainability practices and corporate responsibility. However, the Petitioner has not explained what specific measures or practices his company will undertake in these areas, such that we might use these factors in determining the proposed endeavor's importance.

Although the Petitioner highlighted that his endeavor would positively impact the economy, tax revenue, and job creation, he has not offered sufficient evidence to corroborate these claims. He provided five-year growth projections in his business plan but does not sufficiently substantiate the origin of the projections. The business plan states, "[a]ll revenue was developed based upon the assumptions that will be informed in the Financial Plan;" however the financial plan section of the business plan does not contain sufficient information on how he will achieve the claimed revenue. While the Petitioner plans to focus on providing services to government and state agencies, utilities companies, and the finance industry, he has not estimated the number and size of clients he would need to obtain to sustain the projected revenue levels. As the Petitioner has not provided a sufficient foundation or corroborating details to support the growth projections, we conclude that they have little probative value.

Likewise, we question the job creation projections explained on pages 39 and 47 of the Petitioner's response to the Director's request for evidence (RFE). Not only do we question the accuracy of the math calculating the number of indirect jobs his proposed endeavor will create, but we also question the conclusion that the purported creation of four direct jobs rises to the level of national importance. As we stated above, the Petitioner has not established his business will operate on a scale commensurate with national importance.

The Petitioner emphasized President Biden's initiatives to address cybersecurity vulnerabilities and the importance of such measures for national defense. The Petitioner concluded that his proposed endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives. We agree that the cybersecurity field and the ability of citizens to connect to the Internet are matters of national importance. However, the Petitioner has not submitted sufficient evidence of the impact of his proposed endeavor on President Biden's initiatives. For instance, the Petitioner has not claimed to have developed any new cybersecurity measures, as opposed to implementing or installing measures already known and in existence, nor does the evidence demonstrate the Petitioner's proposed endeavor is federally funded. Accordingly, we cannot agree with the Petitioner's conclusion that his endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives.

We reviewed the advisory opinion from [redacted] University. In the national importance section of his opinion, [redacted] discusses similar arguments to those which the Petitioner already presented. In addition, [redacted] mentions the importance of cybersecurity, connectivity infrastructure, and remote work to society's welfare and the nation overall, the job opportunities the endeavor will create, as well as the demand for IT professionals and the shortage of talent. In determining national importance, the relevant question is not the importance of the field,

industry, or profession in which the individual will work; but rather, "the specific endeavor that the foreign national proposes to undertake." See id. Other relevant questions are what the broader implications of the proposed endeavor are and how the endeavor may have national importance, for example, because it has national or even global implications within a particular field. Here, the Petitioner and [redacted] improperly rely upon the importance of the industry and profession as sufficient to establish the national importance of the proposed endeavor.

The recommendation letters contain the authors' praise of the Petitioner's expertise and the successful results he achieved for employers and clients, and in carrying out his duties. However, these letters do not meaningfully discuss the proposed endeavor or provide specific details supporting its national importance. Furthermore, the letters do not demonstrate that the Petitioner impacted the IT field or the nation as a whole. Therefore, the letters do not support a conclusion that the proposed endeavor has national importance.

On appeal, the Petitioner continues to assert his eligibility under each of the three Dhanasar prongs. In support, he submits a new business plan for a new company he will create, [redacted] The new business plan analyzes cybersecurity's applicability in market sectors such as retail, finance, and healthcare. The Petitioner emphasizes his cybersecurity services but appears to de-emphasize networking advice and consulting services. In addition, the new business plan provides new revenue and job creation projections, among other changes. For these reasons, we conclude the Petitioner's new business plan constitutes a new set of facts and a material change in the proposed endeavor and we will not consider the new facts and changes in determining the Petitioner's eligibility under the Dhanasar framework.[5]

A petitioner must establish eligibility at the time of filing for the requested benefit and must continue to be eligible for the benefit through the adjudication of it. 8 C.F.R. § 103.2(b)(1). It is well established that a visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. See Matter of Michelin Tire Corp., 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). Furthermore, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. For the reasons explained, the arguments and evidence the Petitioner submits on appeal do not overcome this determination. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar would serve no meaningful purpose.[6]

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[5] Nevertheless, we reviewed the new business plan and conclude it does not establish the national importance of the proposed endeavor for reasons similar to those already discussed above.

[6] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under 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).

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Additionally, the record does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.