U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29277372

Date: JAN. 17, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 Nebraska Service Center denied the petition, concluding that the Petitioner had not established eligibility as a member of the professions holding an advanced degree or an individual of exceptional ability and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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.

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 at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

[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).

[2] U.S. Citizenship and Immigration Services (USCIS) has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 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.

The Petitioner proposes to work "in the field of maintenance and repair of heavy equipment in the United States . . . to obtain a greater result and improve the quality of service."

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that 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. Although the Director did not make a determination as to whether the Petitioner met substantial merit;[4] however, we find that the evidence in the record establishes that the Petitioner's proposed endeavor has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. The Director concluded that the Petitioner did not establish that his proposed endeavor has national importance. On appeal, the Petitioner contends that the Director did not give due regard to the evidence submitted, including articles about the importance of automobile technicians, mechanics, and the automotive industry and the shortage of automotive technicians.

Regarding the articles about the importance of automobile technicians, mechanics, and the automotive industry, when determining national importance, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* 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.*

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[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 Director also noted that the Petitioner did not respond to her request for evidence (RFE) from December 2022. On appeal, the Petitioner asserts that he responded to the RFE in April 2023 and submits a copy of the RFE response. Notably, the Petitioner does not provide any proof of delivery to USCIS and there is no record in the file of such RFE response. Nevertheless, we have reviewed the entirety of the record, as well as the RFE response submitted on appeal, which includes copies of documents previously submitted with the initial petition and find that the Petitioner has not established the national importance of his proposed endeavor.

As to the articles about the shortage of automotive technicians, the national shortage of automotive technicians is not, in and of itself, sufficient to establish the national importance of the Petitioner's endeavor. Further, the Department of Labor directly addresses U.S. worker shortages through the labor certification process.

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. Here, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his future customers and employer(s) to impact the automotive industry more broadly at a level commensurate with national importance.

The Petitioner also did not show that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show any benefits to the U.S. regional or national economy resulting from his mechanical engineer position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

We also reviewed the Petitioner's letters of recommendation. The authors praise the Petitioner's abilities and the personal attributes that make him an asset to the workplace. While they evidence the high regard the Petitioner's co-workers have for him and his work, they do not offer persuasive detail concerning the impact of his proposed endeavor or how such impact would extend beyond his employer and/or customers. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.

Because the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976). We also reserve a determination on the Petitioner's eligibility for the underlying immigrant classification.[5]

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[5] The Petitioner submitted evidence stating that he obtained a "qualification degree of mechanical engineer in the specialty / direction "Service and technical operation of transport and technological machines and equipment"" from [redacted]. However, the Petitioner did not submit a credential evaluation to establish the equivalence of this degree to a degree in the United States. A petitioner must submit relevant, probative, and credible evidence to satisfy their burden of proof. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. Moreover, although the Petitioner repeatedly states that he possesses a degree in mechanical engineering, the letter of recommendation from [redacted] states that the Petitioner was "majoring in "Service and technical operation of transport and technological machines and equipment" (*Auto repair*)" at [redacted] (emphasis added). The letter makes no mention that the Petitioner obtained a bachelor's degree in mechanical engineering. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). He has not done so here. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

ORDER: The appeal is dismissed.