U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30146278

Date: MAR. 13, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a network security consultant, seeks classification as either an advanced degree professional or an individual of exceptional ability. 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. 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for the EB-2 classification as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is in the national interest. The matter is now before us on appeal pursuant to 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 immigrant classification, as either a member of the professions holding an advanced degree 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 at least 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. *Id.*

Once a petitioner demonstrates eligibility as either an advanced degree professional or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 a matter of discretion,[1] 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

The Director determined that the Petitioner qualifies for the EB-2 immigrant classification, based upon obtaining the foreign equivalent of a master's degree in business administration. But upon de novo review, we conclude that this finding is not supported by the record. The Petitioner provided a copy of his diploma and transcript for his master in business administration degree from the [redacted] of Business Management Studies in India and a credential evaluation regarding the U.S. equivalency of this degree program. However, the credential evaluation states that the recommended U.S. equivalency is a master's degree in business administration from an institution of higher education that "lacks regional accreditation."[2] The credential evaluation states only this conclusion and does not provide any information as to the basis for the conclusion, nor does the record otherwise establish whether the Petitioner's degree was obtained from the foreign equivalent of an accredited institution of higher education. Based upon this lack of clarity, we conclude that the record is not sufficiently clear to establish that the Petitioner possesses a master's degree or its foreign equivalent, and the Petitioner would need to address this deficiency in any future proceedings where that is required to establish eligibility.[3]

As to the Petitioner's request for a national interest waiver, the Director found that the Petitioner established only the substantial merit the proposed endeavor and did not establish its national importance, that he is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States. The Petitioner states that he proposes to establish a

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and the Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[2] While the regulatory language at 8 C.F.R. § 204.5(k)(2) does not specifically state that a degree must come from an accredited college or university to qualify as an "advanced degree," the requirement is implicit in the regulation. *See Matter of Yau*, 13 I&N Dec. 75 (Reg'l Comm'r 1968) (a degree issued by an unaccredited institution does not allow the degree holder to qualify as a professional within the statute granting preference classification).

[3] The Petitioner also claims to qualify for the EB-2 classification as an individual of exceptional ability and based upon possessing the foreign equivalent of a bachelor's degree followed by at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2). Because, as discussed below, we agree with the Director's conclusion that the Petitioner has not demonstrated the national importance of the proposed endeavor, and because this is dispositive of the Petitioner's appeal, we need not consider the Petitioner's other claims as to EB-2 qualification in the first instance. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

technology-driven consulting firm that specializes in providing comprehensive solutions to the networking and security challenges faced by businesses in the United States.

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director noted that the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead USCIS considers the "specific endeavor that the [noncitizen] proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Director concluded that the evidence in the record did not sufficiently establish the Petitioner's claims about the endeavor's potential to create jobs, contribute to the U.S. economy, and secure the nation's technology infrastructure. The Director found that the business proposal did not demonstrate that the proposed consulting firm has the significant potential to employ U.S. workers or generate other economic benefits on a nationally significant level. Additionally, the Director noted that the business proposal is dated July 5, 2023, after the date of filing the original petition, and that USCIS cannot consider facts that arise only after the filing of a petition. The Director also found that the Petitioner had not demonstrated that the endeavor would provide significant advances in the field of network security. Finally, the Director stated while the articles in the record demonstrate that the importance of the field of network security to the United States, that they did not sufficiently establish that the Petitioner's specific endeavor of operating a consulting firm has national or global implications within the field of network security.

On appeal, the Petitioner asserts that his proposed endeavor, rather than simply the field, is nationally important. The Petitioner also claims that he submitted sufficient documentary evidence to establish his eligibility, specifically his business proposal, his "model or plan for future activities," and the articles submitted. Finally, as to the Director's conclusion that the business proposal was dated after the filing of the initial petition and therefore did not help demonstrate the Petitioner's eligibility at the time of filing, the Petitioner asserts that his complete business proposal was in fact created prior to filing the petition, and that the document submitted was simply an excerpt that was created in response to the Director's request for evidence (RFE). In support of this claim, the Petitioner submits on appeal a new, undated document that he claims is the complete business proposal that predates the filing of the petition. The Petitioner also submits on appeal new letters of recommendation.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Id.* An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon de novo review, we agree with the Director that the record does not establish the national importance of the proposed endeavor. Additionally, although the Petitioner acknowledges on appeal the Director's findings and states that he disagrees with them, he does not identify any specific error in the Director's conclusions of law or statements of fact. For example, in response to the Director's conclusion that the evidence in the record is insufficient because it relates to the importance of the industry or field, rather than the specific proposed endeavor, the Petitioner simply asserts that the endeavor will target critical cybersecurity concerns, optimize network infrastructure, and therefore, "directly contributes to national security, network infrastructure, and technological leadership."

However, this assertion does not sufficiently demonstrate that the Petitioner's proposed consulting firm has the potential to do so at a level commensurate with national importance. Similarly, although the Petitioner contends that the documentary evidence demonstrates the national importance of the endeavor, we agree with the Director that the Petitioner's business proposal, his model for future activities, and the articles submitted are not sufficient to establish this requirement.

The articles submitted, which discuss layoffs in the tech field, cybersecurity challenges in the United States, and financial losses due to cyberthreats, relate to the network security industry in general, rather than the Petitioner's specific, proposed endeavor. None of the articles in the record demonstrate the national importance of establishing a network security consulting firm such as the Petitioner's. We agree with the Director that, in determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. We acknowledge that the articles in the record may be helpful in establishing the potential need for and interest in improved network security and cybersecurity. Primarily, however, this speaks to the substantial merit of the proposed endeavor, which we agree with the Director has been established.

The Petitioner's "model or plan for future activities" states that the company will conduct market research, have a competent team, establish strategic partnerships, and provide exceptional services. Similarly, the business proposal, as submitted in response to the RFE, describes the consulting firm's services and its target market and states that the company will hire highly skilled professionals, tailor its services to each client, and use a multi-faceted marketing approach. The undated business proposal that the Petitioner submits on appeal contains more details, but it similarly describes the company's services, marketing approach, and target market. Regardless of whether the document was created prior to the filing of the petition, we agree with the Director that neither the business proposal nor the "model or plan for future activities" sufficiently establishes that the Petitioner's consulting firm has the potential to broadly impact the field, offer significant economic benefits, or otherwise rise to the level of national importance. The evidence does not demonstrate that the consulting firm's services would differ significantly from those already available on the market, offer improvements or new approaches that are replicable through the field, or otherwise would stand to broadly impact the industry beyond those clients directly served. Additionally, the business proposal includes a "financial projections" section which provides expected revenue and expenses amounts for years one through three of the business, projecting a net profit of $730,000 by year three. However, the document does not provide any basis or explanation for these numbers, stating only that they are based on "extensive market research" and assume "a gradual increase in revenue." We therefore conclude that the Petitioner has not established the credibility of these financial projections. Moreover, even if credible, the Petitioner has not offered evidence to establish that this amount of revenue has the potential to result in the type of "substantial positive economic effects" contemplated in *Matter of Dhanasar*. *Id.* at 890.

In *Dhanasar* we concluded that STEM teaching has substantial merit in relation to U.S. educational interests, but that the petitioner had not demonstrated that the activities of one individual STEM teacher would impact the education field more broadly. *Id.* at 893. The same is true here. The Petitioner has not established that the benefits of his proposed endeavor will extend beyond his own clients or employees to impact the network security field or the U.S. economy more broadly.

The Petitioner's claims on appeal do not overcome the basis for the Director's findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor, as required by the first *Dhanasar* prong. Therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the Petitioner's EB-2 eligibility and the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.