U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27459900

Date: SEPT. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a cybersecurity technology entrepreneur, seeks classification as a member of the professions holding an advanced degree or 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 employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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. *See 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish 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.

I. LAW

To establish eligibility for a national interest waiver, a petition must first demonstrate qualification for the underlying EB-2 immigrant 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.

The regulation at 8 C.F.R. § 204.5(k)(2) defines exceptional ability as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." To demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii):

(A) 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;

(B) 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;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If the above standards do not readily apply, the regulations permit a petitioner to submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

And 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. Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a three-prong analytical framework for adjudicating national interest waiver petitions in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

A. Categorial Ineligibility for EB-2 Classification

In the first instance, we conclude that the Petitioner has not provided relevant, material, or probative evidence to demonstrate their categorical eligibility for classification as an EB-2 immigrant. So we withdraw the Director's conclusion that the Petitioner is qualified for EB-2 immigrant classification as an advanced degree professional. And the record does not contain sufficient evidence to reflect that the Petitioner qualifies for EB-2 immigrant classification as an individual of exceptional ability. So we conclude that the Petitioner is categorically ineligible for EB-2 immigrant classification.

1. The Petitioner Has Not Sufficiently Demonstrated Eligibility For EB-2 Classification As An Advanced Degree Professional

The evidence the Petitioner submitted into the record does not sufficiently establish the Petitioner's eligibility for EB-2 classification as a member of the professions holding an advanced degree. The regulation at 8 C.F.R. § 204.5(k)(2) defines advanced degree to mean any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least give years of progressive experience in the specialty shall be considered the equivalent of a master's degree and so permit classification as an EB-2 permanent immigrant. Progressive experience can be demonstrated by the Petitioner by providing letters from current or former employers showing that they have at least five years of progressive post-baccalaureate experience in the specialty. The regulation at 8 C.F.R § 204.5(g)(1) requires letters from current or former employers include the name, address, and title of the writer, and a specific description of the duties performed.

The Petitioner earned a bachelor's degree in computer science from the Universidade [redacted] in 2004 after a four year course of study. The Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects that baccalaureate degrees earned after a four or five year course of study in Brazil are the single source equivalent to a United States bachelor's degree. So the Petitioner's Brazilian bachelor's degree in computer science is a foreign equivalent degree to a U.S. baccalaureate degree in computer science from an accredited U.S. institution of higher education.

The petitioner also provided letters from current or former employers demonstrating more than 10 years of work experience. But the work experience letters contained in the record are not sufficient to evaluate whether the Petitioner has gained more than five years of progressively responsible post-baccalaureate work experience in the specialty. The Petitioner submitted two letters to support they had acquired the required post-baccalaureate work experience with former employers in Brazil. The letters were not prepared on letterhead. Whilst the letters did contain the name, address, and title of the writer, they did not contain a sufficient specific description of the duties the Petitioner performed during their post baccalaureate work experience. If we cannot determine what work the Petitioner performed and whether it was in the Petitioner's field of specialty, we cannot conclude that the Petitioner is an advanced degree professional as a non-citizen who has earned a single source bachelor's degree in a field of specialty with at least five years progressively responsible post-baccalaureate work experience in the specialty. So the record does not contain adequate evidence to demonstrate the Petitioner's eligibility for EB-2 classification as a professional with an advanced degree.

2. The Petitioner Is Not An Individual of Exceptional Ability

The Director did not evaluate whether the Petitioner demonstrated eligibility for EB-2 classification as an individual of exceptional ability. But the Petitioner submitted evidence in their initial petition for us to consider their eligibility for EB-2 permanent immigrant classification as a non-citizen of exceptional ability. Although the evidence in the record reflects that the Petitioner has provided an official academic record showing that they have a degree from a university in Brazil relating to their field, the remaining evidence in the record does not sufficiently demonstrate the Petitioner's eligibility for EB-2 nonimmigrant classification as an individual of exceptional ability.[1]

> *Evidence in the form of letter(s) from current or former employer(s) showing that the noncitizen 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 work experience letters the Petitioner submitted are not evidence of at least ten years of full-time experience in their occupation for the reasons that they did not sufficiently demonstrate the Petitioner's work experience as discussed by us earlier. The Petitioner's submitted letters do not contain a job description. We are unable to evaluate whether the Petitioner has full-time experience in the occupation without the specific job description required by 8 C.F.R. § 204.5(g)(1). So we cannot conclude that the Petitioner has the requisite 10 years of full-time experience in their occupation.

> *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 submitted three Amazon Web Services (AWS) Partner certifications for additional training, migration, and technical foundations gained after two days and four hours of total duration. The AWS Partner Network is a "community" of individuals who essentially advise individuals and businesses on what AWS products would work best for their individual or corporate needs. Licenses

[1] The Petitioner did not provide evidence of membership in professional associations which demonstrate exception ability under 8 C.F.R. § 204.5(k)(3(ii)(E). So the Petitioner has abandoned that ground.

and certifications show that a person has the specific knowledge or skill needed to do a job. A license, generally conferred by an official government body, confers legal authority to work in an occupation. A certification, whilst not always required to work in an occupation, generally requires demonstrating competency to do a specific job. The AWS certifications held by the Petitioner are in discrete topics. The evidence in the record does not demonstrate the certifications are related to performing the overarching duties of the Petitioner's profession or occupation. And the evidence in the record does not describe how the certifications demonstrate the Petitioner's competency to perform their job duties. The record does not indicate what standards the certifications reflect the Petitioner met. Nor do the certifications indicate whether they must be periodically refreshed or renewed to ensure the professional holding the certifications maintains the competency or standards the certificates purport to reflect. So we cannot conclude the Petitioner has a license to practice the profession or certification for a particular profession or occupation.

> *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 contended they have commanded a salary, or other remuneration for services, which demonstrates exceptional ability. In support, they submitted their proof of income from their previous employment positions and documentation reflecting the average salary of same or similar positions in human resources in Brazil. But the record does not reflect the salary or remuneration expected for individuals of exceptional ability performing duties comparable to those the Petitioner intends to undertake. There is no evidence in the record which would permit us to evaluate the duties a cybersecurity technology entrepreneur of exceptional ability would perform for the salary and their remuneration as a point of comparison. And the broad job description of systems analysts contained in the materials the Petitioner submitted did not readily correspond to the description of services and duties the Petitioner had described for their proposed endeavor. So the Petitioner has not met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) because we cannot evaluate from information in the record whether the Petitioner's salary or remuneration demonstrated their exceptional ability.

> *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 Petitioner submitted three letters of recommendation prepared contemporaneously with these immigrant petition proceedings to demonstrate that they been recognized for achievements and significant contributions to their field by peers, governmental entities or professional or business organizations. But the evidence the Petitioner submitted did not meet the standard of proof because it did not satisfy the basic standards of the regulations. *See Matter of Chawathe*, 25 I&N Dec. at 374 n.7. The regulation requires evidence of recognition of achievements and significant contributions. When read together with the regulatory definition of exceptional ability, the evidence of recognition of achievement of significant contributions should show expertise significantly above that ordinarily encountered in the field.

The Petitioner's letters of recommendation generally credit the Petitioner with developing their endeavor and speak of it in favorable terms. But overall the letters contain vague statements about the writers' impressions of the Petitioner's positive work attributes. The Petitioner would like us to

conclude the writers' conclusions alone constitute recognition of achievements and significant contributions. But these statements are not supported by any evidence in the record which reflects that these are noteworthy as achievements and significant contributions. For example, one letter credits the Petitioner with being "very efficient in [their] job" leading to their expectation that the Petitioner would "exceed and progress" in their career. Another letter highlighted the Petitioner's passion for information technology. Another letter lauded the Petitioner as a "notorious technology specialist." All the writers referred to the Petitioner's proposed endeavor, the [redacted] and described what it would do. But the bonhomie shared between the writers and the Petitioner is not an achievement or significant contribution to their field of endeavor. And the descriptions of the proposed endeavor provided by the writers do not sufficiently describe how the proposed implementation of two-factor authentication by the Petitioner is a significant contribution to the field. Nor do the writers adequately establish how any of the potential and unrealized benefits of the Petitioner's endeavor, such as prevention of fraud and hacking crimes, would be worthy of recognition. So we cannot conclude that the Petitioner meets this ground of eligibility.

So the record contains insufficient evidence to evaluate the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability. The Petitioner should be prepared to address their categorical eligibility for EB-2 classification in any future proceedings requiring a petitioner to demonstrate eligibility as an advanced degree professional or individual of exceptional ability.[2]

B. Substantial Merit and National Importance

Ordinarily, only after determining the Petitioner's eligibility under the EB-2 category can the Director proceed to determine whether a discretionary waiver of the job offer requirement, and thus a labor certification, is warranted. Section 203(b)(2)(B)(i) of the Act. But since the Director's decision here made specific findings about the Petitioner's eligibility for a national interest waiver in their decision, we will discuss the Petitioner's ineligibility for a discretionary waiver of the job offer requirement, and thus of a labor certification, notwithstanding their categorical ineligibility for the EB-2 permanent immigrant classification.

The Director determined that the Petitioner's proposed endeavor had substantial merit. But the Director concluded that the proposed endeavor did not have the required national importance to meet the first prong of the *Dhanasar* framework. We agree.

The Petitioner's endeavor, [redacted] proposes to provide their cybersecurity technology services for information technology systems access control utilizing multi-factor authentication. The Petitioner intends to create, manage, and develop [redacted] utilizing their work experience, expertise, and skill in software and systems development, web development, information system, information security and cybersecurity, IT project management, client relationship management, and "leadership." The endeavor intends to realize benefits in the form of direct and indirect jobs for U.S. workers, prevention and reduction of cyber-attacks, and enhancement of the global competitiveness of the U.S. cybersecurity industry.

[2] As the resolution of the issues pertaining to the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework are dispositive of this appeal, issuing a request for evidence for further investigation and analysis of the Petitioner's categorical eligibility for EB-2 classification would serve no legal purpose.

In support of their claim of eligibility for a discretionary waiver of the job offer requirement, and thus of a labor certification, under *Dhanasar* the Petitioner submitted a business plan, two advisory opinion statements, and a variety of industry and government reports.[3]

The Petitioner essentially argues their endeavor is nationally important because multi-factor authentication is adjacent to or included within numerous good cybersecurity practices. At the outset, the Petitioner's business plan heavily emphasizes how their endeavor's aim to incorporate multi-factor authentication technology and principles is adjacent or contained within the larger category of cybersecurity. The Petitioner endeavored to present "the best security solutions for access control" and "promoting new security practices" in their communities in an "environmentally friendly" and "affordable" manner. In addition to their activities in the cybersecurity arena, the Petitioner's endeavor also expressed an intent to create local jobs.

In *Dhanasar* we focused the first prong of our analysis on the potential impact of a Petitioner's specific proposed endeavor to consider its national importance. The national importance of an endeavor is rooted in its potential impact and whether it has national or global implications within the field of endeavor. The broader implications, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. And substantial positive economic effects can also elevate a proposed endeavor to one of national importance, for example when those effects have significant potential to employ U.S. workers or other positive economic effects particularly in an economically depressed area.

The record does not convincingly demonstrate a potential prospective impact of the Petitioner's endeavor rising to a level of national importance. The evidence does not adequately establish the implications of the endeavor within its field on a national or global level. For example, the Petitioner mentions that multi-factor authentication is a tool within the ambit of the field of cybersecurity. And the Petitioner provided evidence in the record of numerous instances in and outside the United States where cyber-attacks occurred with serious consequences. The Petitioner implied that increased use of multi-factor authentication methods would have ameliorated defenses against cyber-attack. But the record does not sufficiently demonstrate how and to what effect wider adoption of multi-factor authentication would impact the field. The record does not provide sufficient context for an evaluation of how cybersecurity functions currently, the failures that occurred in many security incidents provided as examples, and how and in what degree multi-factor authentication adoption would improve or prevent cyber-attack incidents.

And whilst the Petitioner anticipates hiring U.S contractors, part-time, and increasing their head count it is not clear from the record how this initially part-time contract job opportunity creation for the proposed endeavor itself would have a substantial prospective positive economic effect commensurate with national importance. In *Dhanasar*, we suggested that a Petitioner may be able to demonstrate the national importance of an endeavor by demonstrating "significant potential to employ U.S.

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

workers…in an economically depressed area…" *See Dhanasar* at 890. Here, the evidence in the record does not identify any locality or economically depressed area that could benefit from the Petitioner's hiring plans. And the record does not sufficiently illuminate the significance of the Petitioner's part-time contractual hiring plans to overall economic activity in any given area or field.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organization, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* Moreover, letters from relevant third-party reviewers such as prospective investors, retailers, or other industry experts will generally be more persuasive to support the merits of an entrepreneur's business, business plan, product or technology. The letters' authors are not industry experts in cybersecurity. The Petitioner submitted advisory opinion statements written by a business and marketing professor and a tax lawyer; neither appears to be an expert in the Petitioner's cybersecurity field within which the Petitioner's proposed endeavor resides. The record does not make clear how their experience and individual qualifications render these writers industry experts such that their opinions could shed light on the endeavor's national importance. Setting aside the authors' credentials, we observe that much of the letters' content lacks relevance when it comes to the evaluation of whether the Petitioner's business and services rise to the level of national importance. For example, both letters overwhelmingly discuss the importance of the Petitioner's industry and occupation as well as the Petitioner's previous experiences. Neither provides any meaningful analysis of the endeavor's broader implications or potential prospective economic impact rising to the level of national importance.[4]

A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). The Petitioner has not met their burden of proof with persuasive material, relevant, and probative evidence which by a preponderance demonstrates the national importance of their proposed endeavor.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that they do not merit a favorable exercise of discretion to waive the requirement of a job offer, and therefore a labor certification. And we reserve the issue of whether the Petitioner demonstrated eligibility under the remaining prongs of the *Dhanasar* analytical framework and their categorical eligibility for classification as an EB-2 immigrant. *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 alternate issues on appeal where an applicant is otherwise ineligible). So we dismiss the Petitioner's appeal.

[4] Much of the documentation the Petitioner has submitted focuses on their individual accomplishments and expertise when attesting to the national importance and substantial merit of the proposed endeavor. It is important to note that the Petitioner's accomplishments and expertise are more relevant to the second prong of *Dhanasar*, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 889.

ORDER: The appeal is dismissed.