U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23077970

Date: NOV. 23, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a sports development consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner is qualified as an advanced degree professional, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

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. 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. –
>
> (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.

(B) Waiver of job offer –

(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.

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.

The regulations at 8 C.F.R. § 204.5(k)(3)(i) state that a petition for an advanced degree professional must be accompanied by either:

(A) An official academic record showing that the [noncitizen] has a United States advanced degree or a foreign equivalent degree; or
(B) An official academic record showing that the [noncitizen] 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 [noncitizen] has at least five years of progressive post-baccalaureate experience in the specialty.

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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that 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.[2]

[1] *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).
[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. Eligibility for the Requested Classification

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. 8 C.F.R. § 204.5(k)(2). The Petitioner does not assert nor does the record establish that he is an individual of exceptional ability.[3] The Director concluded that the Petitioner qualified for the underlying visa classification because he has the foreign degree equivalent to a U.S. advanced degree. For the reasons discussed below, we withdraw the Director's conclusion on this issue.[4]

The Petitioner has submitted evidence regarding his foreign education credentials in pursuit of this and other immigration benefits. In the initial filing he submitted a Form ETA-750B, Statement of Qualifications of [Individual], which he signed in March 2019 and attested under perjury pursuant to 29 U.S.C. 1746 that the information contained therein is true and correct. Part B, Item 11 of this form states that the Beneficiary earned a diploma in "physical culture" in 1995 after a four-year period of study at [redacted] [U-] and earned a master's degree in "state and social" at the [redacted] [A-] during a period of study from 2011 to 2012.

The Petitioner also provided a copy of his diplomas and course transcripts as evidence of his foreign education credentials from [redacted] [U-], which indicate that he specialized in physical culture while studying there and as a result of a decision of the State Examination Commission he qualified "as a teacher of physical culture [and] as a coach in boxing." His credentials from A- indicate that he earned a master's degree in state and social construction.

He also initially submitted an evaluation of his credentials prepared by [redacted] [E-] in March 2019, in which the evaluator opined:

> [The Petitioner] has earned a single foreign degree that is considered equivalent to a U.S. Master of Public Administration degree from a regionally accredited college or university in the United States. A bachelor's degree equivalent to a U.S. bachelor's degree is required for entry to master's studies in [redacted]

In cases involving foreign degrees, USCIS may favorably consider a credentials evaluation performed by an independent credentials evaluator who provides a credible, logical, and well-documented case for an equivalency determination that is based solely on the individual's foreign degree(s). Opinions

[3] To establish eligibility as an individual of exceptional ability, a petitioner must provide documentation that satisfies at least three of six regulatory criteria to meet the initial evidence requirements for this classification. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). If a petitioner satisfies these initial requirements, we then consider the entire record to determine whether the individual has a degree of expertise significantly above that ordinarily encountered. *See Kazarian* v. *USCIS,* 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *See* USCIS 6 Policy Manual F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. Only those who demonstrate "a degree of expertise significantly above that ordinarily encountered" are eligible for classification as individuals of exceptional ability. 8 C.F.R. § 204.5(k)(2).

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

rendered that are merely conclusory and do not provide a credible roadmap that clearly lays out the basis for the opinions are not persuasive. *See* 9 USCIS Policy Manual F.5, https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-9.

While the evaluator generally discussed the post-secondary education system in [redacted] as part of her evaluation, she did not discuss, analyze, or ultimately determine the equivalency, if any, of the Petitioner's 1995 diploma from U- to education obtained at an accredited institution of higher learning in the United States. The 1995 diploma, based on the English translation, merely states that he is qualified "as a teacher of physical culture [and] as a coach in boxing," not that he earned a college degree through this program of study. The evaluator's sole focus on the education equivalency of the Petitioner's master's degree - without considering the educational equivalency of his underlying education falls short in demonstrating that he possesses a "United States academic or professional degree or a foreign equivalent degree above that of [a] baccalaureate [degree]." 8 C.F.R. § 204.5(k)(2).

For these reasons it appears that the submitted evaluation does not credibly offer an analytical roadmap that persuasively lays out the basis for the evaluator's opinions. It is important to understand that any educational equivalency evaluation performed by a credentials evaluator or school official is solely advisory in nature and that the final determination continues to rest solely with USCIS. *Id.* (*See also Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988), *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm 1988), and *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).) Thus, we are remanding the matter back to the Director to reassess whether this evaluation is of probative value to the matter here. *Matter of Chawathe*, 25 I&N Dec. at 376.

In considering anew whether the evidence demonstrates that the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the Director should take note that the regulations state that a petitioner must have either (A) "a United States advanced *degree* or a foreign equivalent *degree*," or (B) "a United States baccalaureate *degree* or a foreign equivalent *degree*" plus "at least five years of progressive post-baccalaureate experience in the specialty" to be eligible for classification as an advanced degree professional. 8 C.F.R. § 204.5(k)(3)(i)(A) and (B) (emphasis added). No U.S. or foreign equivalent education is acceptable, under either alternative, unless it includes the specified degree.

To qualify as an advanced degree professional, a beneficiary relying on foreign education must have a single, foreign degree that equates to at least a U.S. baccalaureate degree. The regulations do not allow baccalaureate equivalents based on combinations of lesser educational credentials or of education and experience. *See Employment-Based Immigrant Petitions*, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (stating that "both the Act and its legislative history make clear that, in order to . . . . have experience equating to an advanced degree under the second [preference category], a [noncitizen] must have *at least* a bachelor's degree") (emphasis added).

As discussed, the regulation at 8 C.F.R. § 204.5(k)(2) defines an *advanced degree* as "any United States academic or professional degree or a foreign equivalent degree *above that* of baccalaureate." (emphasis added.) Since the record does not show that the Beneficiary possesses the requisite singular foreign degree equivalent of a U.S. bachelor's degree, it appears questionable that the Petitioner's foreign master's degree is "above that of a [U.S.] baccalaureate degree" and that his master's degree meets the regulatory definition of an advanced degree for EB-2 classification purposes.

Additionally, as it appears that record does not establish that the Beneficiary has a single, foreign degree that equates to at least a U.S. baccalaureate degree, the Director should also consider whether the Petitioner alternatively qualifies for the EB-2 classification as an individual holding a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive post-baccalaureate experience in the specialty under 8 C.F.R. § 204.5(k)(3)(i)(B).

We also observe that the Petitioner has presented inconsistent evidence about his foreign education in the pursuit of obtaining immigration benefits. In the initial filing he asserted that he is "an advanced degree professional who obtained a Ph.D in Pedagogy and a Master's degree in Public Administration." On appeal, the Petitioner asserts "[i]n 1995 [the Petitioner] graduated from [U-] and entered graduate school. In 2002, he successfully defended his thesis on the topic [redacted] In that same year, he was awarded the advanced degree as "Candidate of Pedagogical Sciences (Ph.D.)."

In contrast, the Petitioner's employment workbook indicates that in 1998 he was "expelled from post-graduate school because of the end of study time." Other entries in his workbook indicate that he was employed as a "coach-trainer" in 2001 and that his employment contract for this position ended in August 2002. He then went on to be employed as a "Football Methodist" by another institution from September 2002 through July of 2003. Additionally, while the Petitioner claims to have earned a Ph.D in 2002, he did not include this program of study in the Form ETA-750B submitted with the petition. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. Doubt cast on any aspect of the Petitioner's [evidence] may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner also did not include information regarding his 2002 and 2012 graduate degree study programs in the nonimmigrant visa applications that he submitted to the Department of State (DOS). In his 2015 visa application he indicated that he attended U- from 1991 – 1995 and that his course of study was "faculty of combat," not as a diploma in "physical culture" as noted in the Form ETA-750. Contrary to the information provided in his Form ETA 750, he also described his education in his 2017 visa application as a course of study at U- in "single combat," from 1991 – 1998. The Petitioner must also address these inconsistencies in the record. *Id.*

Accordingly, the Director should consider these issues and determine if the Petitioner qualifies as a member of the professions holding an advanced degree.

B. National Interest Waiver

The Director discussed the Petitioner's evidence and description of his proposed endeavor concluding that his proposed endeavor has substantial merit and is of national importance. For the following reasons, we withdraw his determinations in this regard. The first prong in *Dhanasar*, which requires a showing of both substantial merit and national importance, focuses on the *specific* endeavor that the noncitizen proposes to undertake. Considering the totality of the evidence, the record does not appear to sufficiently substantiate the nature of the Petitioner's specific proposed endeavor(s).

The Petitioner stated in Part 6 of the petition that he is seeking employment as a "sports development consultant," asserting that this position comports with the duties and responsibilities of those employed in the "Management Analysts, SOC Code 13-1111" occupation. According to the U.S. Department of Labor's Occupational Information Network (O*NET) online summary report for this occupation, "Management Analysts" typically:[5]

> Conduct organizational studies and evaluations, design systems and procedures, conduct work simplification and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively. Includes program analysts and management consultants.

The Petitioner discussed his past accommplishments in the initial filing, and indicated that he "creates development and administrative processes for national sports organizations to ensure successful development of elite national athletes." He provided a "prospective plan of work [] in the USA for 2019-2023, which indicated for instance that he will devote much of 2019 to 2020 to "learning [the] English language [and] the achievements of the USA in physical culture and sports;" and that he would also make contacts with United States universities, sports organizations, the U.S. Olympic committee, and the American boxing association. His plan alludes to his intention to perform a diverse array of activities, such as:

- Establishing a list of competitions in the U.S. on martial arts and contact the organizing committee;
- Establish[ing] health clubs and sections for disabled people and the elderly in the [redacted];
- Becoming a member of [redacted]
- Get acquainted with the activities of scientific and theoretical journals of the USA;
- Implementation of scientific research and innovations;
- Provision of sports clubs and organizations with scientific works; and,
- Developing and distributing social clips that promote physical culture and sports. . . .

We observe that many of these activities appear to fall far afield of tasks that a "management analyst" would typically perform, and do not closely align with the Petitioner's concurrently stated intention to "create[] development and administrative processes for national sports organizations to ensure successful development of elite national athletes" in the petition.

In response to the Director's request for evidence (RFE), the Petitioner provided a January 2021 statement indicating that he will:

> [F]ocus on creating partnerships between sport organizations, educational institutions, and government agencies to increase visibility and development for underfunded Olympic sports in the United States, such as female boxing, as well as a particular focus on development of individual athlete sports which could qualify as potential Olympic sports such as sambo, [redacted], and kickboxing.

[5] *See* https://www.onetonline.org/link/summary/13-1111.00.

Here, the Petitioner presents a high-level listing of tasks with diverse areas of focus for his endeavor, such as learning English, learning about sports in the United States, competing in sports competitions, establishing health clubs and health club programs for the disabled and elderly, writing scientific articles, developing and implementing sports-related innovations, and organizing master classes and round tables featuring Olympic champions, among other things. The lack of detail regarding the *specific activities* that the Petitioner will pursue in his endeavor, and how he will carry through on these planned activities in the United States, raises questions regarding whether he has offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor has substantial merit and that it rises to the level of national importance.

The Director should analyze the Petitioner's evidence to determine if his proposed endeavor has national or global implications in the field of sports development consulting, significant potential to employ U.S. workers, or other substantial positive economic effects. If the Director concludes that the Petitioner's documentation does not meet the substantial merit and national importance requirement of *Dhanasar*'s first prong, his decision should discuss the insufficiencies in his evidence and explain the reasons for ineligibility.[6]

Regarding the Petitioner's remaining assertions of eligibility under the second and third prongs of the *Dhanasar* analysis, we agree with the Director's ultimate conclusions.

III. CONCLUSION

We withdraw the Director's decision and remand the matter for further review and entry of a new decision. On remand, the Director should review all evidence submitted to date (including the brief submitted on appeal), determine if the Petitioner qualifies for classification as a member of the professions holding an advanced degree, and analyze the Petitioner's arguments and evidence to determine if he meets all three requirements set forth in the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.

[6] Moreover, in determining whether an individual qualifies for a national interest waiver, we must also rely on the specific proposed endeavor to determine whether the foreign national is well positioned to advance it under the *Dhanasar* analysis.