U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32290495

Date: SEPT. 5, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a lodging manager, seeks employment-based second preference (EB-2) 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 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 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 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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). Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Our precedent decision in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions.

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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.

Id.

II. ANALYSIS

A. Advanced Degree Professional

The Director concluded the Petitioner qualifies as an advanced degree professional because he holds the foreign equivalent of a U.S. master's degree. However, possession of an advanced degree alone does not make an individual qualified for the EB-2 immigrant classification. A petitioner must establish they are both a "member of the professions" *and* "hold[] an advanced degree." 8 C.F.R. § 204.5(k)(1); *see also Matter of Shin*, 11 I&N Dec. 686, 688 (Dist. Dir. 1966) (noting that the mere acquisition of a degree alone does not qualify a person as a member of a profession).

As stated above, a profession includes "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2). On his Form I-140, Immigrant Petition for Alien Workers, the Petitioner indicated his intention to work in the United States as a lodging manager under the Standard Occupational Code (SOC Code) 11-9081. In support of his endeavor, the Petitioner submitted copies of the Department of Labor's *Occupational Outlook Handbook* discussing the lodging managers occupation, which states that the typical entry-level education for positions in this occupation is a high school diploma, or the equivalent.

Since the Petitioner's own evidence makes clear that these positions do not require a U.S. baccalaureate degree, or its foreign equivalent, as "the minimum requirement for entry into the occupation," we disagree with the Director's conclusion that the Petitioner is a member of the professions as defined at 8 C.F.R. § 204.5(k)(1)-(2) and hereby withdraw it.

B. Proposed Endeavor

In his Form I-140, the Petitioner described his endeavor as working as a lodging manager, where he will "[c]oordinate the facility's front-desk activities and resolve problems, set budgets, approve expenditures, and allocate funds to various departments." In addition, he submitted an "Autobiographical Statement" where he indicated he will contribute his knowledge and expertise as a lodging manager "to a wide range of tourism development and other projects." He explained:

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

> I plan to establish several related businesses that coordinate work in the service sphere . . . My business highlight will be the opportunity to get acquainted with my idea of the service culture, our traditions and peculiarities, brought up in me by our rules in the tourism fields, as well as in restaurant and hotel business. My market demand analysis for such services here allowed me to draw conclusions about what kind of business could bring the greatest development prospect, profit as a result, both for me and my future employees, and for the realization of my dreams. I intend to draw up and submit to you my business plan with one of the most promising scenarios that will help me to start successfully as a prosperous businessman here in the USA.

But the Petitioner had reimagined his endeavor by the time the Director issued the request for additional evidence (RFE). In response to the RFE, the Petitioner submitted a new business plan stating how he now intended to launch a hotel management company "offering services to independent hotels and resorts, focusing on environmentally-friendly practices and initiatives." This new endeavor would consist of a company providing sustainable hospitality services including sustainability assessments, customized sustainable hotel solutions, marketing of eco-focused hotels, promoting sustainable features and amenities, as well as other support and guidance.

The Director determined this new information constituted an impermissible material change of the Petitioner's proposed endeavor. Upon de novo review, we agree.

We are not persuaded by the Petitioner's claims on appeal that the Director's decision was based on an incorrect application of law or policy, and that it was incorrect based on the evidence in the record at the time of the decision. We also are not convinced by the Petitioner's argument that his business plan simply provided additional evidence in response to the RFE and that it does not contradict the assertions made in the initial petition for the reasons discussed below.

A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, the purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), (8), and (12). 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).

Here, the Petitioner's description of the activities constituting his endeavor varied considerably between his initial filing and RFE response. At the time of filing, the Petitioner described his endeavor as coordinating front-desk activities at a facility, resolving problems, and performing other administrative tasks. In his "Autobiographical Statement," the Petitioner similarly described his plan to "establish several related businesses," which he did not identify, in the service sphere after performing a market demand analysis. His stated intention was to create and submit a business plan "with one of the most promising scenarios that will help me to start successfully as a prosperous businessman here in the USA." The record developed initially at the time of filing indicates that the Petitioner's proposed endeavor was, in large part, essentially a job search.

The endeavor's nature had changed considerably by the time the Petitioner responded to the RFE and demonstrated significant alterations going beyond mere clarification of the activities described in the Petitioner's initial filing. By this point, the Petitioner was indicating a new intention to launch a hotel management company focused on providing sustainable and environmentally-friendly hospitality services. While we agree that a petitioner may provide additional explanation regarding the specifics of a proposed endeavor in an RFE response, the Petitioner's plans, beginning with the RFE reply, describe a new, markedly different set of facts describing his proposed endeavor. Put simply, the Petitioner's initial endeavor was a combination of work as a lodging manager performing administrative and front-desk activities, while exploring the most promising prospects in the service industry. The Petitioner's new plans in the RFE reply, and contended in this appeal, are to launch a hotel management company focused on environmental sustainability. The record reflects that the essence of his initial endeavor was *exploration,* while the essence of his current endeavor is *implementation*. The Petitioner did not merely "fill in the gaps" or "flesh out" the endeavor's original description; he changed it materially.

The Petitioner's initial endeavor has concluded because, as fleshed out in the RFE response, he has completed his original exploration of potential business opportunities and is now implementing his new, chosen venture of launching a hotel management company. This new endeavor was presented after the filing date and cannot retroactively establish eligibility. Accordingly, we conclude that the Petitioner made an impermissible material change to his proposed endeavor. We will, therefore, adjudicate the petition under the fact pattern as originally presented: the Petitioner's plan to explore career options and work as a lodging manager.

We have insufficient information concerning the Petitioner's initial proposed endeavor with which to determine whether it has substantial merit or national importance. Again, the Petitioner had concluded the initially proposed endeavor by the time he replied to the RFE and, therefore, never fully built out his petition based on that endeavor. The Petitioner has not adequately explained, and the sparse evidence in the record does not show, why working as a lodging manager and performing exploratory market research to determine the best business opportunity has substantial merit or national importance. Because we have so little information regarding the initial proposed endeavor, we are unable to even *conduct* a full analysis under the *Dhanasar* framework, let alone determine whether it has substantial merit and national importance under *Dhanasar's* first prong. We, therefore, find that the Petitioner did not submit persuasive evidence to support a finding of substantial merit and national importance and, thus, did not meet his burden to show he satisfies *Dhanasar's* first prong. *See Matter of Chawathe*, 25 I&N Dec. at 375 (providing that a petitioner bears the burden to prove by a preponderance of the evidence that they are eligible for the benefit sought).

Because the identified bases for denial are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining issues and arguments regarding his eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule 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 D-L-S-*, 28 I&N Dec. 568, 577 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not established his qualification for the underlying EB-2 visa classification or met the requisite first prong of the *Dhanasar* analytical framework, we conclude he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.