U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-C-F-

DATE: JAN. 2, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a sports coach, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree, and that she 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 contending that she qualifies for classification as a member of the professions holding an advanced degree and that she is eligible for a national interest waiver under the *Dhanasar* framework.

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 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 definition:

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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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.[1] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

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

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) 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.[2]

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Petitioner presented her "Bachelor in Physical Education" degree (February 2008) from in Brazil and an academic credentials evaluation indicating that the aforementioned degree is the foreign "equivalent of the U.S. degree of Bachelor of Science in Physical Education earned at a regionally accredited institution of higher education in the United States." In addition, she submitted a December 2017 letter from Technical Manager at in Brazil, stating that the Petitioner began working at that club in April 2011 as co-developer of "a swimming program tailored to professional athletes of the ."[3] further explains the nature of the Petitioner's duties and notes that she was recognized for professional excellence in coaching in 2013.

We find that the aforementioned letter from the Petitioner's former employer offers sufficient information to demonstrate that she has at least five years of progressive post-baccalaureate experience in coaching to constitute the equivalent to an advanced degree in that specialty. *See* 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Petitoner has established that she qualifies for classification as a member of the professions holding an advanced degree.

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] The record reflects that the Petitioner left this job in June 2016.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. With respect to her proposed endeavor, the Petitioner indicates that she intends to continue her "career as a Sports Coach in the United States" and that she "will help U.S. athletes and training facilities that need professional coaches to teach athletes proper techniques and skills to be competitive, especially in the sport of swimming." She describes her future plans:

> My career plan in the United States is to start my own training complex, where children will start an active lifestyle at a very young age, learning various motor techniques and sports. Those with specific skills will move on in the program to become a competitive athlete. I will be able to provide expert advice on proper form, technique, and help athletes with both the physical and mental aspects of being a competitive athlete. I can also help coach at other training facilities and with teams.

The Petitioner further elaborates on her proposed endeavor stating:

> My specific plan in the United States is to open a Coordination and High-Level Training Center. The main goal of my work is to work on the long-term training of future athletes. I will work on physical fitness, and motor coordination from a child's early years of life.
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> At this Center, those ages 1 to 11, would have the opportunity to participate in various motor experiences and sports, for both competition and experimentation, with highly qualified professionals. . . .
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> These children will be observed during all activities, and at the end of the process, a certain sport will be selected, allowing the child to choose to continue to reach a high level in the sport. I will then work closely with the children that decide to continue to develop their ability in swimming, with the goal of training the athletes to be competitive swimmers.

In addition, the Petitioner asserts that she has "been contacted by many mothers that want their children to develop physical abilities because there are no places where children can begin to experience and enjoy sports." She also contends that she has "spoken to possible investors, who have approved of the idea and intend to participate in the Center as soon as I put the business plan into practice." The Petitioner further claims that her "endeavor would generate tax revenue for the state, and generate many jobs for U.S. workers" including receptionists, physical education teachers, technicians, physiotherapists, lifeguards, and nurses.

Alternatively, the Petitioner lists various organizations' job vacancies in which she "intend[s] to pursue employment." These job vacancies include [redacted] swim instructor, swimming school

aquatics director, swim coach, resort fitness instructor and aquatic specialist, head water polo coach at a public school, and head swim instructor for a municipality. We find that the Petitioner's proposed endeavor to purse work as a coach, athletic training center operator, or swim instructor, which provides physical fitness opportunities for her students, athletes, and clients, has substantial merit.

The record includes articles discussing the value of effective coaches, public participation in sports and exercise in the United States, a coaching shortage in school sports[4], and the favorable economic outlook for the U.S. sports coaching industry.[5] The Director determined that these articles and the information the Petitioner provided about her proposed endeavor were not sufficient to demonstrate its national importance. Specifically, the Director found that the while the Petitioner's future work would affect the "individuals being trained," the evidence did not show "an impact on the broader field" sufficient to demonstrate the national importance of her proposed endeavor.

On appeal, the Petitioner asserts that her proposed endeavor offers "not only positive personal physical effects, but also generates positive impact to the quality of living and economy of individuals and athletes." She further contends that her proposed work "is certainly of national importance, particularly nowadays, with the low quality of living and the need for better performance in the sports field."

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. 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.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. Although the statements from the Petitioner reflect her intention to offer sports training and fitness programs to multiple young children and competitive athletes, she has not presented sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly[6], we

[4] A projected shortage of school sports coaches in the United States does not render the work of an individual coach nationally important under the *Dhanasar* framework. We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

[5] While these documents help show the merit of the Petitioner's proposed work, they are not sufficient to demonstrate the national importance of any particular coaching program proposed by the Petitioner.

[6] *See Id.* at 893.

find that the Petitioner has not shown her proposed endeavor in this case stands to sufficiently extend beyond her trainees, students, and sports clients to impact the industry more broadly than her specific programs. Nor has she shown that her operation of a "Coordination and High-Level Training Center" would have broader implications in competitive swimming or any other U.S. sport.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While her statement claims possible increases in state tax revenue and "many jobs for U.S. workers," the record does not include sufficient information or evidence regarding any projected tax revenue or job growth attributable to her proposed training center. The Petitioner has not shown that benefits to the regional or national economy resulting from her project would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of V-C-F-*, ID# 1850888 (AAO Jan. 2, 2019)