U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11271452

Date: AUG. 12, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 Nebraska Service Center denied the petition, concluding that the Petitioner 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 immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. –
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> (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.
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> (B) Waiver of job offer –
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> (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.

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).[1] *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,[2] 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.

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.

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)

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[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*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not sufficiently demonstrated the substantial merit and the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.[4]

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicates that he "currently works as a Security Officer for the [redacted]," and asserts that he "wishes to employ his expertise to strengthen the homeland security of the United States." He describes his prospective endeavor, in relevant part:

> [The Petitioner] views the U.S. as the country where he can most effectively and productively employ his expertise in counterterrorism; security management; security risk assessment; intelligence gathering; armed group trends; ethnic conflicts; conflict resolution; peacekeeping; disarmament, demobilization, and rehabilitation.
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> . . . .
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> [He] is primed to provide consulting or policy advice for any number of federal agencies, such as USAID and the U.S. Department of State's bureau for Population, Refugees, and Migration. . . .

The Petitioner further asserts "his experience qualifies him to work in federal, state, and local government agencies or law enforcement [or] for a myriad of security agencies" such as "Federal Bureau of Investigation, the Federal Bureau of Prisons, or the U.S. Marshall Service."

The Director concluded in his denial that the Beneficiary's prospective work within the above listed fields has substantial merit. However, we withdraw the Director's determination that the Petitioner has established the substantial merit of his proposed endeavor. The first prong in *Dhanasar*, which requires a showing of both substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake. Considering the totality of the evidence, the record does not substantiate the Petitioner's specific endeavor(s).

The Petitioner presents a high-level listing of diverse areas of national concern to the United States, (e.g., counterterrorism, peacekeeping, rehabilitation, and conflict resolution), but does not sufficiently describe his proposed endeavor. For example, the Petitioner indicates that he is primed to provide

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

[4] The Petitioner submitted evidence to establish his eligibility for the benefit sought. While we may not discuss every document submitted, we have reviewed and considered each one.

policy advice or consulting services to federal agencies "about existing ethnic rivalries and other conflicts that threaten American aid workers." However, generally describing broad areas of experience and knowledge and simply stating the Petitioner might consult with or provide advice to federal agencies without evidence is insufficient to establish his proposed endeavor, and that it will have substantial merit and national importance. He states in his response to the Director's request for evidence (RFE), and on appeal, that he is already employed by [redacted], and as such he "is already employed with [redacted] employer with a substantial presence in the United States." However, he does not discuss in sufficient detail *how* his employment at [redacted] demonstrates both substantial merit and national importance.

The Petitioner also alternatively asserts that he might work for local, state, or federal law enforcement agencies, or for "a myriad of security agencies" performing public security or policing activities, the substance of which has not been adequately described in the record. He notes in his RFE response that "the United States has witnessed an upsurge in violent public demonstrations that require the knowledge of security experts and experienced police officers. . . which underscore the need for talented experts in the field of public security in order to maintain our peaceful way of living and our economic prosperity." Nonetheless, without more information about his public security and policing expertise and how he will apply it in the United States, the Petitioner has not sufficiently established his proposed endeavor sufficient for us to determine that his work in the United States will have substantial merit and national importance. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The Petitioner has not done so here.

On appeal, the Petitioner submits an opinion letter from Dr. P-M-, professor of political science at [redacted] University, who concludes that the Petitioner "satisfies the [*Dhanasar*] first prong, because his proposed employment is in a field (security) that is both of substantial intrinsic merit and national in scope." The professor appears to conflate the eligibility requirements in the *Dhanasar* first prong, in part, with the framework put forth in *Matter of New York State Dep't of Transp.* ("*NYSDOT*"), 22 I&N Dec. 215.[5] As discussed, in announcing the *Dhanasar* framework we vacated *NYSDOT*. Here, the Petitioner's reliance on the professor's conclusion that a petitioner may meet the first *Dhanasar* prong based solely on the substantial intrinsic merit and national scope of a particular field is misplaced.

The professor also discusses the expertise the Petitioner has gained through various security-related assignments while he was employed first by [redacted] police force, and later by [redacted] However, the Petitioner's expertise acquired through his employment relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar*'s first prong. Though the professor opines that the Petitioner's "work combating terrorists is invaluable, his education impressive,

[5] The NYSDOT framework looked first to see if a petitioner has shown that the area of employment is of "substantial intrinsic merit." 22 I&N Dec. at 217. Next, a petitioner had to establish that any proposed benefit from the individual's endeavors will be "national in scope." *Id.* Finally, the petitioner must demonstrate that the national interest would be adversely affected if a labor certification were required for the foreign national. *Id.*

and his promise for future accomplishment undeniable," he does not sufficiently identify, analyze, or discuss the Petitioner's prospective endeavor in the United States.[6]

For these reasons, we conclude that the professor's letter is not probative towards establishing the Petitioner's eligibility under the first *Dhanasar* prong. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* For the sake of brevity, we will not address other deficiencies within the professor's analyses.

Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. In *Dhanasar,* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Without more detail regarding the specific endeavor in which the Petitioner will pursue, we conclude that he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance.

The Petitioner has also not demonstrated that the specific endeavor he proposes to undertake has national importance such as significant potential to employ U.S. workers or has substantial positive economic effects for our nation. Absent sufficient evidence regarding any projected U.S. economic impact attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's consulting projects 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.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the Dhanasar analysis. Because the Petitioner has not provided sufficient information regarding his proposed endeavor, we cannot conclude that he meets either the first or second prong of the Dhanasar precedent. Accordingly, he has not demonstrated eligibility for a national interest waiver. Further analysis of his 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 conclude that 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.

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[6] Similarly, the Petitioner has provided reference letters from current and former colleagues who outline his work accomplishments and put forth general statements that assert his services would be beneficial to the United States. While the letter writers hold the Petitioner in high regard, the submitted letters do not provide sufficient information regarding the specific endeavor(s) that the Petitioner will engage in or explain the national importance of his proposed work under the *Dhanasar*'s first prong.