U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13453932

Date: AUG. 13, 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 an Assistant Professor and Pharmaceutical Chemist at [C-]" and asserts that he "will provide a strong benefit to the U.S. society and economy and I look forward to utilizing and developing my talents further with a U.S.-based organization, [p]harmaceutical or academi[c] research." His endeavor appears to span several fields of interest, including "[p]harmaceutical chemistry; organic analytical chemistry; high-resolution mass spectrometry; x-ray crystallography; teaching university students; scientific research; pharmaceutical quality control; [and] industrial testing methodologies."[5] He initially described his prospective endeavor, in relevant part:

> [The Petitioner] is prepared to work for any number of federal agencies devoted to global health. Specifically, he qualifies to support and provide consulting for the Department of State's Office of Global AIDS Coordinator and Health Diplomacy (OGAC), which oversees U.S. global HIV efforts; the U.S. Agency for International Development (USAID); and Department of Health and Human Services (HHS) operating divisions, especially the Centers for Disease Control and Prevention (CDC). Additionally, he could work for the [HHS] Office of Global Affairs, which leads the department's engagement with bilateral and multilateral partners. Domestically, [he] is also prepared to support public health initiatives on the U.S. homeland. . . . Not only would [the Petitioner] be instrumental in enhancing vital U.S. public health initiatives, given his background, he would also be of particularly valuable service in advancing the U.S.'s STEM education priorities.

The Director issued a request for evidence (RFE), asking for a detailed description of the Petitioner's proposed endeavor, noting that where the record regarding the first *Dhanasar* prong is vague, USCIS cannot meaningfully determine whether the proposed endeavor meets the first prong requirements. In response, the Petitioner submitted a business plan in which he discusses his academic accomplishments and work history, and describes his plans for his endeavor, in relevant part, as follows:

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

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

[5] We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

> I have contacted people in the [U.S.] and [plan] to get into the area of teaching and research, for that reason I am approaching colleges and university as a target. [T]o utilize my other expertise of quality control of active pharmaceutical ingredients, I am approaching pharmaceutical industries or targeting to establish as [a] consultant for pharmaceutical laboratories.

He further noted that he would first seek faculty and research positions at universities, then later would "develop [his] own consulting firm," which would "eventually" create employment opportunities for U.S. workers. After considering the initially submitted evidence and the material provided in response to his RFE, the Director concluded in his denial that the Petitioner had not submitted evidence sufficient to meet the first prong in *Dhanasar*, which requires a showing of both substantial merit and national importance, focusing on the *specific* endeavor that the foreign national proposes to undertake. Considering the totality of the evidence, we agree that the record does not substantiate the Petitioner's specific endeavor(s).

On appeal, the Petitioner argues that "[i]t has been well-settled case law for over 30 years of enactment of Immact '90 that no job offer is required in the EB-2/NIW category," asserting that the Director erred in his decision and RFE by impermissibly imposing "evidence of future employment or endeavor." While a job offer from a specific employer is not required in an EB-2 petition involving a national interest waiver request, in determining national importance in such cases, the relevant question is not the importance of the field, 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.* Here, the Petitioner has not established the specific endeavor sufficient for us to determine that his work in the United States will have substantial merit and national importance.

The Petitioner presents articles and information which discuss high-level, diverse areas of national concern to the United States, including its need for clean drinking water, better medicinal treatments for diseases such as diabetes, the shortage of workers in STEM-related occupations, and the challenges facing the global response to the HIV-AIDS epidemic, which he could focus on within his prospective endeavor. For example, the Petitioner indicates that he could provide consulting services to federal agencies who oversee "U.S. global HIV efforts." However, generally describing broad areas of experience and knowledge and simply stating the Petitioner could 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 puts forth vague assertions, stating for example that his "achievements to date are most impressive and make a compelling case that waiving [the job offer] requirement can only be in our interest." Notably, he does not discuss in sufficient detail *how* he would support United States' global HIV efforts through his proposed endeavor.

Similarly, the Petitioner indicates in the "career plan" submitted on appeal that he has previously taught college-level courses within the organic and analytical chemistry fields and reiterates that he is pursuing faculty positions at U.S. universities. He asserts that he could share his pharmacological

expertise through teaching college students analytical techniques such as high-resolution mass spectrometry. 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. In this case the record does not establish *how* the Petitioner's instructional work would impact the field of pharmacy, or the U.S. healthcare industry more broadly, as opposed to being limited to the students that he teaches.

On appeal, the Petitioner also points to previously submitted letters of support discussing his knowledge, skills, and work experience, but these letters do not sufficiently explain the national importance of his specific endeavor under the *Dhanasar*'s first prong. For instance, the letter from Dr. S-, discusses aspects of the Petitioner's previous work in the field of analytical chemistry, noting for that he has conducted research focusing on the development of detection methods for: (1) identifying toxic levels of lead in drinking water, and (2) the presence of high levels of sodium in spices used in cooking meals for human consumption, as well as his involvement in projects to design new anti-microbial drug molecules. She asserts that the Petitioner's will "have more room to develop and implement [his scientific contributions] for the United States, and through his skills he will help our country "remain globally competitive in technologies while reducing the cost of domestic infrastructure rehabilitation." Likewise, T-I- favorably discusses aspects of the Petitioner's research and teaching career, maintaining the Petitioner "could be of great help in the infrastructure of the USA," and "will do excellently well as a high caliber profession[al] or an entrepreneur in any environment."

While Dr. S- and T-I- provide general assertions about the Petitioner's skill and abilities, they do not sufficiently identify, analyze, or discuss how the Petitioner's proposed work will broadly impact the United States.[6] Without more, the Petitioner has not 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.

Notably, the Petitioner further asserts on appeal that the record "demonstrates that [the Petitioner] has [] education, skills, knowledge and a prior record of success." However, the Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

[6] We acknowledge that the letter writers hold the Petitioner in high regard, but the letters in the record do not provide sufficient information regarding the specific endeavor(s) that the Petitioner will engage in or adequately detail the national importance of his proposed work under the *Dhanasar*'s first prong. The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters to determine whether they support the petitioner's eligibility. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990).

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.