U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17571346

Date: AUG. 23, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a human resources (HR) manager, seeks classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment-based, "EB-2" immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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. –

(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.

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, USCIS may, as a matter of discretion,[1] 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, regarding 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

[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).

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

The Petitioner's résumé lists a number of short-term jobs in various fields from 1993 to 2001, and indicates that he served as a senior manpower and recruitment officer for [redacted] from May 2001 to December 2018. In March 2019, he began working as a human resources partner with [redacted] described as a "network of . . . freelance recruitment professionals." He entered the United States as a B-2 nonimmigrant visitor in September 2019.

A. Eligibility for the Underlying Immigrant Classification

The Director denied the petition based the *Dhanasar* framework for national interest waiver petitions, but first we will address a threshold issue relating to the Petitioner's eligibility for the underlying immigrant classification.

The Director determined that the Petitioner qualifies for classification as a member of the professions holding an advanced degree. We disagree, as explained below.

1. Member of the Professions Holding an Advanced Degree

In the initial filing, the Petitioner did not specify whether he seeks classification as an individual with exceptional ability in business or as a member of the professions holding an advanced degree. His initial submission consists primarily of his résumé; a job description for his position at [redacted] reference letters from employers; and copies of various diplomas and training certificates.

In a request for evidence (RFE), the Director stated, without elaboration, that "the submitted evidence demonstrates the beneficiary qualifies for the requested classification (E21)." Elsewhere in the RFE, the Director stated that the Petitioner "is seeking immigrant classification as a member of the professions holding an advanced degree." In the denial notice, the Director stated: "The petitioner holds a Master of Business Administration [degree]. He meets the underlying classification by holding an advanced degree."

The Director's analysis, however, was incomplete, for two reasons. First, the Petitioner must show that his foreign degree – in this case, a "master of business administration" degree from [redacted] in Egypt – is equivalent to a United States advanced degree. *See* 8 C.F.R. § 204.5(k)(3)(i)(A). The record does not contain a credential evaluation or other documentary evidence to establish the necessary equivalency.

Second, the Petitioner must not only hold an advanced degree, but also be a member of the professions. The regulation at 8 C.F.R. § 204.5(k)(2) defines a profession as one of the occupations listed in section

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

101(a)(32) of the Act (architects, engineers, lawyers, physicians, surgeons, and teachers), as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. In this instance, the Petitioner's earliest claimed college degree is a bachelor's degree in financial and business studies that he received in 2006. Because [redacted] hired the Petitioner as a senior manpower and recruitment officer in 2001, about five years before he earned that degree, we must conclude that a bachelor's degree is not the minimum requirement for entry into the occupation.

With respect to the Petitioner's prospective employment in the United States, the Petitioner has provided only general and conflicting information about his intended occupation. He refers to himself as a "human resources manager," which is a specific job title. A particular position may have minimum educational requirements. But he also indicates that he may choose to work as a freelancer. (As discussed further below, the Petitioner states, on appeal, that he seeks to run his own staffing agency.) It is not evident that any mechanism exists to prevent such freelance work by individuals without a baccalaureate degree. As such, the information is not sufficient to show that the Petitioner seeks employment in a profession.

For the above reasons, we withdraw the Director's finding that the Petitioner qualifies as a member of the professions holding an advanced degree.

2. Exceptional Ability

On appeal, the Petitioner states that "USCIS accepted [his] proof that he is an 'alien of exceptional ability' and therefore, there is no need to address this point further." The record does not support this assertion. As discussed above, the Petitioner initially did not specify which EB-2 classification he sought, and to the minimal extent that the Director discussed the issue, the Director referred to the Petitioner as a member of the professions holding an advanced degree. There has been no determination that the Petitioner qualifies as an individual of exceptional ability.

Also, at no time in this proceeding has the Petitioner articulated a specific claim of exceptional ability in business and explained how the record supports such a claim. Because the burden of proof rests on the Petitioner to establish eligibility, and because we will dismiss the appeal for other reasons, we will not undertake an initial determination regarding exceptional ability at the appellate stage.

Below, we will discuss the Petitioner's national interest claim under the *Dhanasar* framework. The Director concluded that the Petitioner did not sufficiently describe the proposed endeavor, and had not met any of the three *Dhanasar* prongs.

B. Nature of the Proposed Endeavor

On the petition, the Petitioner states that he seeks employment as a "human resources manager," who will "manage and implement various HR activities (organisation design, JA, recruitment, etc.) in order to efficiently meet short and long-term staffing requirements, manage the execution of organisational development in line with [redacted]'s strategy, objectives and standards." The reference to [redacted] implies that the Petitioner seeks employment there, but the record does not show that [redacted] seeks to employ him in the United States, or that [redacted] has U.S. operations at all.

In an RFE, the Director set forth the *Dhanasar* framework and asked the Petitioner to "submit a detailed description of [his] proposed endeavor," because the initial submission "does not indicate a specific endeavor that the beneficiary proposed to undertake." The Petitioner's response includes a five-page statement which discusses his past experience but provides few details about his proposed endeavor beyond stating that he seeks to continue working in human resources. In a section of the statement headed "Commitments and Future Plans," the Petitioner states that he has begun taking courses in order to familiarize himself with U.S. business practices, and that he is "financially very stable."

Elsewhere in his statement, the Petitioner states that his work "might include some or all" of several listed responsibilities, including "Manpower Planning," "Recruitment, Selection, and Onboarding," and "Training and Development." The Petitioner asserts that he "can serve organizations as . . . one of their HR management staff or as an external consultant providing freelanc[e] services." This open-ended assertion identifies potential options rather than a specific proposed endeavor. The Petitioner's statement in response to the RFE does not mention [redacted] through which he had previously performed freelance HR work in Qatar, or any other named organization that performs a similar function.

The above information shows that, before the appeal, the Petitioner had stated a general intention to work in the HR field in some capacity, but he had not identified a specific proposed endeavor.

In the denial notice, the Director stated: "The petitioner's initial evidence did not indicate a specific endeavor. In response to the RFE, the beneficiary indicated that he would work as a[n] HR Certified Professional, but this is a description of an individual [*sic*] not an endeavor."

On appeal, the Petitioner asserts that the Director erred by referring to the Petitioner as an "HR Certified Professional" instead of an "HR Manager." The Petitioner does not explain how this use of terminology might have prejudiced the outcome of the decision. Moreover, in his response to the RFE, the Petitioner repeatedly refers to himself as "an HR certified professional" and "a Certified Professional in Human Resources."

The Petitioner states that he provided a detailed employment history, which "clearly described an endeavor of working as an HR Professional/Manager, which is the field where he has over 20 years of experience overseas." Prior to the appeal, the Petitioner identified his *field*, but not the "specific endeavor" required under *Dhanasar*. *See id.* at 889.

On appeal, the Petitioner states that he will not "only be employed as an employee," and that he "registered his own company . . . on November 21, 2020 in order to start operating his own staffing agency in the U.S." This registration took place six days before the denial of the petition, after the Petitioner had responded to the RFE. The Petitioner also submits a copy of the new company's business plan, dated three weeks after the filing of the appeal. Therefore, the record contained no information about the company for the Director to consider at the time of the denial. As noted above, the RFE response included only vague speculation that the Petitioner may choose to work as "an external consultant providing freelanc[e] services," while, in the same sentence, acknowledging that he may instead seek a position on the "HR management staff" of an unnamed employer.

The Petitioner cites chapter 3.8(b) of the *AAO Practice Manual*, which states that "[t]he AAO will accept new evidence on appeal." The Petitioner also asks for a degree of consideration because he claims to have initially relied on a third-party preparer who proved to be uncooperative after the Petitioner received the RFE. Nevertheless, the purpose of an appeal is to establish errors of fact or law in the underlying decision. *See* 8 C.F.R. § 103.3(a)(1)(v). New information about a newly established company does not establish any such error.

We agree with the Director that, based on the information available to the Director at the time of the decision, the Petitioner had identified his intended field of employment, but not a specific proposed endeavor. The distinction is significant because *Dhanasar* did not create, either explicitly or implicitly, blanket waivers for entire fields, occupations, or specialties. If the proposed endeavor is simply a statement of an individual's intended occupation with a description of the duties inherent to that occupation, then that individual seeks, in effect, a waiver based on the nature of the occupation.

C. Substantial Merit and National Importance of the Proposed Endeavor

The Director concluded that, without "a detailed description of the proposed endeavor . . . , USCIS is unable to determine that the beneficiary's endeavor has both substantial merit and national importance." We will focus here on the "national importance" element.

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. 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.

In his RFE response, the Petitioner states: "HR Professionals are an important partner in the strategic decision-making process, and without a proper functioning human resource department, a company would fail to achieve a high level of efficiency and workforce management." This assertion relates to the *collective* importance of HR specialists, but does not explain how his work, in particular, would have national importance.

The Petitioner, in his RFE response, also lists specific tasks he would undertake, such as "Manpower Planning" and "Recruitment budgeting." He explains how these tasks would benefit his employer or clients, but does not explain their broader implications. Importance to a specific company or organization does not necessarily translate into *national* importance.

On appeal, the Petitioner states that "HR affects companies . . . by attracting, hiring, and retaining the appropriate personnel." General assertions about the importance of HR management rely on the collective, aggregate impact of everyone working in the field, each one directly affecting one employer or a small number of clients.

The Petitioner also asserts that "many companies would be hard pressed to find a more qualified individual than" him, because "[v]ery few HR Professionals have as much experience recruiting for international organizations as" he does. The Petitioner does not explain how these assertions show the national importance of his prospective individual work as an HR manager. As we noted in *Dhanasar*:

> The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise.

Id. at 886 n.3.

For the above reasons, we conclude that the Petitioner has not established the national importance of his proposed endeavor. Because this issue, by itself, determines the outcome of the appeal, we reserve the remaining *Dhanasar* prongs.[3]

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion. We also conclude that the Petitioner has not met his burden of proof regarding the underlying immigrant classification. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).