U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17678995

Date: AUG. 30, 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 qualified 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 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 –
>
> (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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. 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.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The Director determined that the petition was improperly filed based on the Petitioner's failure to submit the required Form ETA-750B, or alternatively Form ETA 9089, Application for Permanent Employment Certification Form ETA 9089. Although the Petitioner submits a properly signed and fully executed Form ETA-750B on appeal, the regulation at 8 C.F.R. § 204.5(g)(2) states that the Director may request additional evidence in appropriate cases. Although specifically and clearly requested by the Director, the Petitioner declined to provide Form ETA-750B in response to the request for evidence (RFE). The Petitioner's failure to submit this document cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

On the Form I-140, Immigrant Petition for Alien Worker, the Petitioner did not complete any of the information in Part 6 "Basic Information About the Proposed Employment." In a personal statement submitted in support of the petition, the Petitioner stated, "I would like to express my sincere gratitude for the opportunity to consider my case," and "I hope that my skills and experience, reflected in the submitted documents will meet the requirements of U.S. Citizenship and Immigration Services." The Director issued an RFE asking the Petitioner to provide a detailed description of the proposed endeavor and why it is of substantial merit and national importance.

In response, the Petitioner provided a second personal statement in which he indicated that he had "three main goals for the benefit of America and its citizens." Specifically, he stated that he wished to (1) continue his "scientific activity" in an American university; (2) implement an "innovative project" that will create jobs for American citizens; and (3) create a business with an innovative view on traditional foods. He further explained that the "innovative project" he wished to implement was called "Multitender," which he described as follows:

> [Multitender] will change the perception of modern business taking into account the latest events in the world. All people in one way or another need each other's help. The "Multitender" application will allow everyone to earn money honestly and at the same time help those in need. In our perception of business, the seller is always looking for a buyer, but my idea is that buyers are looking for a seller.

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

Aside from the Petitioner's own statements, no additional information regarding or documenting the existence of the Multitender application was submitted.[4]

In denying the petition, the Director determined that the Petitioner "did not provide a sufficiently detailed description of his proposed endeavor." The Director noted that the Petitioner did not further describe the "Multitender" application or how he intended to use it, nor did he explain how he intended to develop or implement his business idea. Finally, the Director observed that the Petitioner's broad statements regarding his proposed endeavor, which also included undefined "scientific activity," precluded a determination that the endeavor satisfied the three prongs of the *Dhanasar* framework.

On appeal, the Petitioner provides a statement and additional evidence, but does not specifically identify any erroneous conclusion of law or statement of fact in the Director's decision, as required in 8 C.F.R. § 103.3(a)(1)(v). Although he reaffirms his intention to continue his "scientific activity" in the United States, he also claims that his business idea is to "cooperate with a US company that is a taxpayer and specializes in the production of vendor machines." Despite providing these assertions on appeal, he fails to address the Director's concerns regarding the proposed endeavor, and provides no supplemental details regarding either of these proposals.

In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the nature of the Petitioner's proposed endeavor remains unclear. Despite the submission of an additional statement on appeal, the Petitioner did not address or refute the Director's determination that the proposed endeavor was not sufficiently described, nor did he provide sufficient information or details to reflect a specific proposed endeavor as contemplated in *Dhanasar*. Instead, the Petitioner claims that he intends to "continue his scientific activity" in an American university while simultaneously claiming he will develop vending machines with a U.S. company, without providing any defining details about either endeavor. As previously noted, the Petitioner did not complete Part 6 of the Form I-140 petition, which requests basic information about the proposed U.S. employment. Moreover, in his completed Form ETA-750 Part B, the Petitioner indicates that the "Occupation in which Alien is Seeking Work" is Research/Science/Education without further specification. As the Petitioner did not specifically articulate the nature of his proposed endeavor, he has not demonstrated that the proposed endeavor has both substantial merit and national importance. Absent a clear description of his proposed endeavor, we cannot determine whether a nexus exists between the proposed endeavor and potential positive effects on any specific field. Moreover, the Petitioner makes no claim that the proposed endeavor will have national or global implications for any particular field.

Furthermore, the Petitioner has not established that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects

[4] We acknowledge the Petitioner's submission of a number of reference letters which provide basic details about his education and generally compliment him as an individual. The letters, however, provide little insight regarding his career accomplishments or his proposed U.S. endeavor. While some of the letters state that he has conducted research in the field of "technical science," no additional details regarding any specific research projects, or resulting publications, are provided. Rather, these letters simply compliment the Petitioner and indicate, for example, that "he will be a beneficial addition to any organization." While all the letters praise the Petitioner, and some vaguely refer to his research, none of the letters discuss or refer to the claimed "Multitender" application. Moreover, none of them provide specific examples of any of his past research, nor do they indicate that his research has been sufficiently implemented, utilized, or otherwise affected his field, consistent with the *Dhanasar* analysis.

for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that the benefits to the U.S. regional or national economy resulting from the Petitioner's "scientific activity" or his development of "vendor machines" would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner has not established that his proposed endeavor meets the first prong of the *Dhanasar* framework.

The Petitioner did not present a specific endeavor and did not sufficiently demonstrate what he intends to pursue in the United States. Because the documentation in the record does not establish the substantial merit or national importance of his 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 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 demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.