U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13310412

Date: JUL. 12, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an aeronautical engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 Texas 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 additional documentation and 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 –
>
> (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.

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 (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

[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).

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.[3]

II. ANALYSIS

The Director concluded 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, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

> I intend to continue using my expertise and knowledge in the field of Aviation by working as an Aeronautical Engineer in the United States. I have extensive experience in equipment maintenance, repairing, operation monitoring, management regulatory framework, business planning, certification, recruiting, instructing, lecturing, compliance, supervision, advisory, aviation consulting, and systems evaluation within the Aviation industry.
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> . . . .
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> My career plan in the United States is to continue working as an Aeronautical Engineer, Airworthiness expert, and Consultant, to advise American Avionics companies on how to grow successfully while following the rules set forth by the regulation bodies of the Aviation industry. I intend to continue using my unique expertise and extensive knowledge in the field of Aviation, where I can provide expert managerial and technical services to the United States. I will bring optimal results to any Aviation company or regulating body that chooses to hire me in the future. My exceptional skills in Aviation prove I am more than qualified to aid the U.S. in an industry, which right now is experiencing much backlash and criticism over their inability to keep passengers of commercial airline flights safe.

In response to the Director's request for evidence, the Petitioner offered an updated statement claiming:

> I intend to continue using my expertise and knowledge working as an Aeronautical Engineer in the aviation industry . . . .
>
> . . . .

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

> [M]y overall proposed endeavor in the United States is to offer my expertise to advise American and U.S. – based companies in the aviation industry on how to grow successfully, while following aircraft maintenance and safety rules set forth by both the Federal Aviation Administration (FAA), and the international regulatory agencies. I will do this by utilizing my unique expertise and extensive technical knowledge in aircraft engineering assembly, maintenance and technology.
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> I propose to use my skills and knowledge as an expert in the aviation field to work for U.S. companies in need of an improvement in their maintenance practices and operations, in order to increase the safety and quality of their aircraft. This will be done by being hired as an employee, or providing consulting services. I can work for aircraft manufactures or for aircraft operators, in several positions, assessing risk and advising with regards to maintenance and regulatory compliance.

The Petitioner provides another statement on appeal maintaining that he "will also continue to stay up to date on the latest field standards, researching the most advanced and innovative aircraft developments, so that I am able to advise my clients and served entities on how to maintain the most modern aircraft fleets" and "will strengthen the United States' aviation industry, especially by allowing for its market competitiveness when confronted with innovative market/product developments, as well as by addressing a rising skills gap, which is undermining several economic and social affairs." The Director determined that the Petitioner demonstrated the substantial merit of his proposed endeavor, and the record supports that conclusion. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance of his proposed endeavor.

In determining national importance, the relevant question is not the importance of the overall industry, field, 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. Although the Petitioner argues that the Director "did not give due regard" to industry reports and articles, the Petitioner must demonstrate the national importance of his specific proposed endeavor rather than the national importance of aeronautical engineers or the aviation industry, including maintenance, safety, and economic market. 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.

In addition, the Petitioner contends that the Director did not sufficiently weigh "his credentials, expertise, professional accomplishment," "[e]vidence of [his] work in the field," and "[l]etters of recommendations from experts in the field, which confirm [his] expertise, significant contributions and importance in the Aeronautical Sector." The Petitioner's experience, abilities, and contributions in his field, however, 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.

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. While the Petitioner proposes "to offer his expertise to advise American and U.S.-based aviation manufacturers on how to successfully grow," he has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of his specific proposed endeavor rises to the level of national importance. Instead, as indicated above, the record contains evidence regarding general information relating to the overall aviation industry.

Further, the Petitioner argues the national importance of his current employment with [redacted].[4] Specifically, the Petitioner states:

> . . . I received a competing offer to work full time at [redacted] – the U.S. subsidiary of [redacted], the company designs, develops, manufacturers, and markets aircraft and aviation systems. I joined the company in June of 2019, and I was particularly recruited to serve its product strategy department, doing analytical reports in competitive intelligence matters.
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> . . . I serve as Marketing Analyst III, in which I am responsible for collecting market inputs, in the form of product feedback and competitive intelligence reports . . . .
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> I am also in charge of monitoring the competition, including newly introduced market products, and I also work with key stakeholders to figure out how these market developments would affect the company's strategy and market dominance/share. . . .
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> . . . I also coordinate and develop the company's [redacted] – which serves the purpose of sharing news and best practices among all company units. I also support the company's strategic planning team, for which I offer in-depth analyses regarding competitive market metrics, in regard to manufacturing, safety, and production procedures. . . .

The Petitioner filed his petition in July 2018. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, 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. Here, the record does not show how the Petitioner's employment with [redacted], as well as with any of his prior claims of future employment with U.S. companies, stands to sufficiently extend beyond his current or prospective employers, to impact the aviation industry more broadly at a level commensurate with national importance.

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] The Petitioner also submits articles regarding coverage of [redacted]

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 benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the 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.