U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 11853177

Date: JUL. 15, 2021

Appeal of Texas 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 Texas 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. On appeal, the Petitioner asserts 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 he 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*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 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.

The Petitioner stated that he is "a consumption scientist, researcher and specialist in the Brazilian consumer behavior," noting that he is a founding partner of a prestigious research and consulting company specializing in Brazilian consumer behavior and consumption habits. Regarding his claim of eligibility under *Dhanasar's* first prong, the Petitioner indicated that he intends to provide consultancy services to the North American corporate world by helping companies seeking to enter the Brazilian and other Latin American markets. The Petitioner presented a personal plan outlining his proposed endeavor, indicating that as a self-employed consultant, he plans to "assist several companies with consulting works focusing [on] the companies that are willing to begin export processes or to open branches in Brazil" and "assist companies that are already acting in Brazil and that are not satisfied with their results." The Petitioner claimed that he created a teaching methodology called "Agile Training Methods," which he intended to use to train U.S. executives through his consultancy services or through lectures or seminars.

In addition, the Petitioner discussed the importance of tourism on the U.S. economy, noting that the United States was the top travel destination for Brazilian tourists, and indicated that he would be readily available to offer his consultancy services to executives of various companies in the tourism industry such as travel agencies, theme parks, airlines, cruise companies, and rental car chains. The Petitioner stated that as a result of his proposed endeavor, "the American economy will be strengthened, workplaces will be created in the American industries which will positively affect that American domestic market with more Americans employed, more internal consumption and, consequently, greater welfare to the American citizens."

The record includes numerous expert opinion letters discussing the Petitioner's qualifications, all of which state that the Petitioner's proposed consultancy services will provide substantial benefits to the U.S. companies and the overall economy. For example, a letter from [redacted] professor of marketing at [redacted] University, noted that the Petitioner's education and over 25 years of experience working in the field of Brazilian consumer behavior would benefit U.S. companies in their pursuit of entry into the Brazilian market, noting that most failed international business launches "can be attributed to failure to understand the local market culture and customer behavior."

Additionally, the record contains letters of recommendation from former clients, such as [redacted], who claimed that the Petitioner's specialized research and consulting services helped it establish "a more assertive and attractive advertising campaign in the Brazilian market." The Petitioner also submitted numerous news articles discussing the failure of U.S. companies such as [redacted] and [redacted]s in penetrating the Brazilian market as a result of their inability to properly understand the

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

demands of Brazilian consumers, noting that his expertise in the field would be invaluable to American companies who needed assistance in bridging the commercial and cultural gap between the two countries. In addition, the Petitioner supplemented the record with various information pertaining to consumer relations with Brazil such as visitor and tourism statistics, job reports, agricultural export opportunities, and a fact sheet by the U.S. Department of State discussing U.S. relations with Brazil.

The Director found that the Petitioner's proposed endeavor has substantial merit, and we agree with that determination. The record includes information demonstrating the value of consumer relations with Brazil and Latin America and the manner in which increased exports and tourism can benefit the U.S. economy. The Petitioner's proposed work as a consultant in this area, therefore, has substantial merit.

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. 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.

The Director found that the proposed endeavor did not have national importance, noting that the Petitioner had not shown that his proposed work as a consultant would substantially enhance the financial health of American companies and the U.S. economy, or significantly impact employment levels regionally or nationally. On appeal the Petitioner argues that the Director's finding was erroneous, and reasserts that his proposed endeavor stands to positively impact the American tourism industry, American exports, and "the qualification of U.S. executives." He contends that with his training, "right decisions will be taken," indicating that such decisions will result in more Brazilian tourists, which will ultimately require more American labor to serve them. In support of these assertions, he relies on a newly submitted opinion letter from [redacted], associate professor of economics at [redacted] University and CEO of [redacted] who opines that the United States can benefit from the Petitioner's expertise in Brazilian consumer behavior for several reasons. He notes that current unemployment levels and economic difficulties resulting from the COVID-19 pandemic could be eased or alleviated by the Petitioner's facilitation of trade between Brazil and U.S. companies, and discusses the Petitioner's prior success in assisting [redacted]s in its expansion into the Brazilian market. [redacted] also notes that the Petitioner's experience in Brazilian consumer behavior will contribute to revitalization of the U.S tourism industry.

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. Although the Petitioner's statements reflect his intention to provide valuable consulting services for his future clients, 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. 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 that the Petitioner's proposed consulting work has implications beyond any individual client

or company at a level sufficient to demonstrate the national importance of his endeavor. He has not demonstrated that the specific work he proposes to undertake has broader implications to the U.S. export and tourism industries.

The Petitioner also argued that his prospective teaching and lecturing opportunities will further educate American students and executives in the field of Brazilian consumer behavior, thus increasing the ability for American companies to enter the Brazilian market. He relied on an opinion letter from [redacted] associate professor of marketing at [redacted] who states that "based on my experience in hiring faculty, it is clear that [the Petitioner] would be strongly considered for a teaching role within a U.S. university." The Petitioner also claimed that 13 American universities have invited him to present lectures or seminars on the topic of Brazilian consumer behavior, and submitted copies of email correspondence in support of this assertion.[4] Additionally, he submitted two emails from "American executives" expressing interest in his proposed lectures and training. All of the referenced emails, however, postdate the filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Nevertheless, it should be noted that interest in the Petitioner's work and his plans for future activities 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.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, while the Petitioner repeatedly mentions past consulting projects to which he contributed, he has not shown that his consulting activity stands to provide substantial economic benefits in the United States. 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 consulting services 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. 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 established he is eligible for or otherwise merits a national interest waiver as

[4] We note that the emails provided were issued in response to the Petitioner's direct inquiry regarding the possibility of lecturing at the respective universities. Contrary to the Petitioner's assertions, we note that while some of the emails indicate an interest in having the Petitioner lecture at their respective institutions, most simply acknowledge the Petitioner's proposed work and wish him success in his future endeavors.

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.