U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11894698

Date: JUNE 9, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a chief financial officer, 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 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.

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. –
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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.

(B) Waiver of job offer –

(i) National interest waiver. . . . the 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 a matter of discretion, 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)

[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*).

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 Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor in the field of finance, the Director concluded that the record does not establish that the Beneficiary's endeavor has national importance. The Director also concluded the record did not satisfy the third *Dhanasar* prong. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the endeavor as "[determining] and formulat[ing] policies and provid[ing] overall direction of companies or private and public sector organizations within guidelines." In response to the Director's request for evidence, the Petitioner elaborated that the "overall proposed endeavor in the United States is to offer my expertise to help U.S. companies of all sizes achieve financial health and experience growth, realizing their full potential. I will do this by developing and implementing financial plans, creating opportunities for growth, and developing and implementing projects to realize that growth." The Petitioner did not specify a particular entity in which she would pursue the proposed endeavor; instead, the Petitioner generally stated an "inten[t] to continue my career in the United States as a [c]hief [f]inancial [o]fficer, for any company that requires my specialized expertise and knowledge."[3]

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that "[t]here is no evidence that the 'ecosystem' of the United States financial sector will be affected by the [Petitioner's] employment or lack thereof."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

On appeal, the Petitioner summarizes responsibilities and capabilities required by chief financial officers in general. The Petitioner also discusses a sample of companies that have addressed a lack of diversity among chief financial officers as a cohort. The Petitioner asserts that chief financial officers have access to data because of technological advances, and they use that data to develop business plans and policies. The Petitioner specifically states that "[b]ased on all the facts shown [on appeal], . . . USCIS made an erroneous decision when it denied [the petition] on the fact that 'there is no evidence that the ecosystem of the United States financial sector will be affected by the [Petitioner's]

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] Although we do not discuss each document in the record for brevity, we have reviewed the record in its entirety.

employment or lack thereof' and that 'the [Petitioner's] financial officer activities are unlikely to offer benefits that extend beyond her immediate employer to impact the field of finance broadly.'"

Contrary to the Petitioner's statement, the information provided on appeal does not discuss the Petitioner specifically or her proposed endeavor; therefore, it does not address whether the Director erroneously concluded that the record does not establish whether the proposed endeavor will affect the United States financial sector or offer benefits that extend beyond her immediate employer.

The generalized proposal to determine and formulate policies and provide "overall direction" of an entity does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner's unspecified employer, as contemplated by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361. Similarly, describing the endeavor as "developing and implementing financial plans, creating opportunities for growth, and developing and implementing projects to realize that growth" does not establish how the plans and projects would create growth, the nature of that growth, whether that growth would be substantial, and whether the growth would have broader implications rising to the level of national importance, beyond simply benefitting the Petitioner's potential employer. *See Dhanasar*, 26 I&N Dec. at 889. Moreover, the Petitioner's focus on appeal on chief financial officers in general, and certain companies' hiring choices for their respective chief financial officers, does not pertain to the specific proposed endeavor, nor does it establish how performance of the proposed endeavor would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.