U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10432798

Date: JUNE 9, 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 mental health organization, seeks second preference immigrant classification for the Beneficiary, a group facilitator and case manager, 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 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 motion to reopen, the Director affirmed the denial, specifically that the record did not establish that "the [B]eneficiary's proposed endeavor has national importance or that, on balance, it would be beneficial to the United States to grant a national interest waiver."

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. . . . 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

[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*).

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) 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. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted. Specifically, the record does not establish that the Beneficiary's proposed endeavor has national importance, as required by the first *Dhanasar* prong.

On motion to reopen, the Director concluded that "the benefit [provided by the Beneficiary as a group facilitator and case manager] to each individual client/member [of the petitioning mental health organization] does not represent a broad enhancement to societal welfare based on the evidence submitted." The Director further observed that the record "did not establish the importance of the [petitioning mental health organization], itself, to the nation as a whole or the field of drug addiction and mental illness counseling."

On appeal, the Petitioner asserts that an article titled "The Impact of Substance Use Disorders on Families and Children: From Theory to Practice," published in *Social Work Public Health* in 2013 satisfies the first *Dhanasar* prong. Specifically, the Petitioner directs our attention to the article's statement, as follows:

> Each family and each family member is uniquely affected by the individual using substances including but not limited to having unmet developmental needs, impaired attachment, economic hardship, legal problems, emotional distress, and sometimes violence being perpetrated against him or her. For children, there is also an increased risk of developing an SUD themselves.

We recognize that the benefit provided by the Beneficiary as a group facilitator and case manager to each individual client also provides a benefit to the family members of the clients who receive the mental health care. However, the record does not establish whether, beyond the benefits provided to the clients and their family members, the Beneficiary's proposed endeavor stands to have broader implications rising to the level of having national importance or whether it would offer possible substantial positive economic effects to at least a region of the United States.

The Petitioner also submits on appeal an excerpt from the Department of Justice's National Drug Intelligence Center's 2011 National Drug Threat Assessment and an accompanying two-page summary sheet, indicating that "[t]he estimated economic cost of illicit drug use to society for 2007 was more than $193 billion." The record does not establish the estimated economic cost of illicit drug

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

use to society during a period more recent than 2007. Furthermore, the record does not establish the estimated economic cost of illicit drug use to a specific region of the United States or, more specifically, the region in which the Beneficiary would work, and in contrast the possible substantial positive economic effects the endeavor would offer to that region. To the extent that the estimated economic cost of illicit drug use to society in 2007 is informative, the threat assessment excerpt explains that the majority of that economic cost, $120 billion in lost productivity, "generally occurs through the incapacitation of individuals, either by reduced motivation or by confinement in residential treatment programs, hospitals, or prisons."

The Petitioner presents a conflicting assertion regarding how the threat assessment and summary sheet satisfy the first *Dhanasar* prong. The Petitioner asserts the following:

> [T]he impact [of the Beneficiary's mental health services] goes way beyond each individual member of [the Petitioner's clients]. In addition the economy is helped every time a substance abuser is sent back to work as a productive member of the economy. Every substance abuser who is out of work because of addiction . . . costs the economy in lost wages, and increased medical costs which in many cases are being picked up by the taxpayers, since in all likelihood abusers are not insured if they are not employed.

In summary, the Petitioner asserts that the Beneficiary's services help the economy by sending a recovering substance abuser back to work as a productive member of the economy, but those services also are detrimental to society because taxpayers pay for the medical costs of treating a substance abuser back to work. Regardless of whether the Petitioner asserts mental healthcare is beneficial or detrimental to society, the threat assessment and summary sheet report the estimated economic *cost* of providing substance abuse treatment to rehabilitate workers; they do not establish the estimated economic *benefit* of providing treatment, such as the estimated cost of substance abuse if rehabilitation were not provided, in order to assess the benefit of those services. Considered as a whole, the threat assessment excerpt and summary sheet do not establish whether the Beneficiary's proposed endeavor stands to have broader implications rising to the level of having national importance or whether it would offer possible substantial positive economic effects to at least a region of the United States.

Next, the Petitioner submits an excerpt from a National Institute on Drug Abuse's survey on nationwide trends on substance use, which observes that "9.4 percent of . . . Americans aged 12 or older . . . had used an illicit drug in the past month [in 2013]," compared to "8.3 percent in 2002," indicating an increase between 2002 and 2013. The excerpt is silent on trends between 2013 and the petition filing date. The excerpt also observes that, although "an estimated 22.7 million Americans . . . needed treatment for a problem related to drugs or alcohol, . . . only about 2.5 million people . . . received treatment at a specialty facility." The survey excerpt mischaracterizes the figures in terms of the respective proportions of the overall population (8.6 and 0.9 percent, respectively); however, the appropriate ratio is that only 11 percent (2.5 million out of 22.7 million) of Americans who need treatment receive it at a specialty facility. The Petitioner does not assert on appeal, and the record does not support the conclusion, that the treatment gap among substance abusing Americans in 2013 establish whether the Beneficiary's proposed endeavor stands to have broader implications rising to the level of having national importance or whether it would offer possible substantial positive economic effects to at least a region of the United States.

The Petitioner also submits on appeal a copy of the written testimony provided by witnesses from the Department of Health and Human Services to the Senate Committee on Health, Education, Labor and Pensions in 2017. The testimony asserts that the Department of Health and Human Services "has made the [opioid] crisis a top clinical priority and is committed to using [its] full expertise and resources to combat the epidemic." The testimony asserts that there is "a lack of health system and healthcare provider capacity to identify and engage individuals, and provide them with high-quality, evidence-based opioid addiction treatment." The Petitioner does not assert on appeal, and the record does not support the conclusion, that the lack of healthcare provider capacity to identify and engage individuals, and provide them with high-quality, evidence-based opioid addiction treatment establishes whether the Beneficiary's proposed endeavor stands to have broader implications rising to the level of having national importance or whether it would offer possible substantial positive economic effects to at least a region of the United States.

Next, the Petitioner submits on appeal a research project proposal from the Beneficiary, dated November 2019, after the petition filing date and, moreover, after the Director's decision on the motion to reopen.[3] A 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). A visa petition may not be approved at a future date after a petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). The research project proposal submitted for the first time on appeal, dated after the petition filing date, presents a set of facts that did not exist at the time of filing and, therefore, may not establish eligibility. *Id.*

In summation, the Petitioner has not established whether the proposed endeavor has national importance, in terms of its potential prospective impact, as required by the first *Dhanasar* prong. We reserve our opinion regarding whether the record satisfies the requirements of the second or third *Dhanasar* prongs.

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.

[3] The Petitioner also submitted on appeal a two-page letter from the Beneficiary and two employment confirmation letters. However, the letters address whether the Beneficiary qualifies as a member of the professions holding an advanced degree with sufficient work experience, which are not issues on appeal. The letters do not address the first and third *Dhanasar* prongs, which are the issues on appeal. Accordingly, we need not discuss the letters further.