U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12264308

Date: SEP. 13, 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 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.

(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 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 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 Director concluded that the Petitioner had not sufficiently established the national importance of his proposed endeavor as required by *Dhanasar*'s first prong. *See Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner asserts that USCIS "did not give due regard" to the evidence submitted, such as the Petitioner's work plans and statements, U.S. business activities, and industry articles and reports. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.[4]

The Petitioner initially listed his job title as "civil engineer" in Part 6 of the Form I-140, "Basic Information About the Proposed Employment," and indicated that he will "perform engineering duties in planning, designing, and overseeing construction of building structures, and facilities." He also initially provided a May 2018 work plan, in which he outlines his endeavor, as follows:

> My career plan in the United States is to use the knowledge I have acquired to work on large scale projects in [c]ommercial, [r]esidential and corporate real estate projects. I have been a co-owner of three construction companies in my tenure as a civil engineer in Brazil. Additionally, through the contacts I have made during my career, I have the ability to bring in many foreign investors in order to develop many construction projects in the United States.

The Director issued a request for evidence (RFE) to establish the national importance of the Petitioner's endeavor, to include a detailed description of the proposed endeavor, and an explanation of its national importance, supported by corroborative, documentary evidence.[5] In response, the Petitioner submitted a November 2019 work plan indicating that he had:

> [R]egistered [five] limited liability companies that are already operating by building houses in the [redacted] Florida region. . . I have [constructed] 6 residential houses. One of them is finished, and it has been put up for sale. The other 5 [houses] are still in progress. I have already brought 7 investors from Brazil to form partnerships to invest in the latter development projects. Our goal is to build more houses as they are sold, and consequently continue to foster the economy with the generation of several direct and indirect jobs . . .

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[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] While we may not discuss every document submitted, we have reviewed and considered each one.
[5] We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

The record also includes articles and reports which examine issues such as the skilled labor shortage in the U.S construction industry, the five-year economic outlook for U.S. the construction industry, how the housing market influences economic growth, the significance of foreign investment in real estate in the U.S, and the revival of Brazilian investment in south Florida. The record therefore shows that the Petitioner's proposed work which involves residential construction specifically, and the construction and real estate industries generally, has substantial merit.

The Petitioner points to letters of support discussing his knowledge, skills, and work experience, but these letters do not sufficiently explain the national importance of his proposed work under the *Dhanasar*'s first prong. For instance, the letter from L- indicates that the Petitioner "is a highly capable professional . . . he can be a key member of any team in many nationally important projects." Another letter, from I-C-, states that the Petitioner was "very quick at finding intelligent solutions to assist the engineers responsible for the [a]rchitecture and [f]acilities projects and [] is an excellent negotiator at the time of the commercialization of the enterprise." Notably, the Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.[6]

In determining national importance, the relevant question is not the importance of the field, 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.

In his appeal brief, the Petitioner asserts that "residential construction's contribution to the U.S. economy is a matter of national importance," emphasizing how this industry "will play a key economic role in the United States, particularly given current population projections." He contends that his endeavor "mirrors national importance, as confirmed by nation-wide relevant research and statistics," and "improves the capability and effectiveness of the nation's real estate industry for the benefit of all Americans." The Petitioner further asserts that his proposed work "will have broad implications in the real estate field, as his civil engineering activities relate to a matter of national importance and impact, particularly because of the ripple effects upon communities and citizens in the United States."

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 ongoing intention to provide construction industry services and secure capital investment funding through his Florida-based companies, he has not offered sufficient

[6] The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. *See 1756, Inc. v. U.S. Att'y Gen.,* 745 F. Supp. 9, 15 (D.D.C. 1990)

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. We therefore conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his companies, investors, and clients to impact the field of civil engineering, or the construction and real estate industries more broadly at a level commensurate with national importance.[7]

The Petitioner has also 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, he has not shown that his investment plans and companies' future staffing levels stand to provide substantial economic benefits in Florida or the United States.

On appeal, he asserts that the record provides "concrete projections of the benefits he may offer [] the American workforce," and contends that he has already created "nearly 100 U.S. jobs." In support of the appeal, he submits a letter from the general manager of a partner organization, who asserts that "over 60 direct jobs" have been created through its construction partnership with the Petitioner's companies. Within the general manager's letter is a list of companies with the number of "direct" jobs that have been created to date. He notes for instance, that their collective residential construction activities have created jobs within companies that supply lumber, paint, plumbing, electrical equipment, kitchen cabinetry and countertops. However, other than a few invoices and contracts, the Petitioner has not sufficiently explained or documented the creation of 60 jobs through his endeavor.

The Petitioner's business plan suggests that his endeavor involves the purchase of building lots upon which houses are built for resale upon their completion. The general manager asserts that two land surveyor positions were created during the on-going construction of six residential homes as mentioned in the Petitioner's work plan. He further contends that two mechanical engineering positions were also created through this economic activity. The Petitioner has not provided a copy of the underlying job creation analysis that formed the basis for the general manager's conclusions. Considering the evidence in the record it seems incongruous that the purchase of six building lots would require the ongoing services of two land surveyors. Likewise, the Petitioner has not adequately described how his construction operations directly created two mechanical engineering positions. Here, the Petitioner has not submitted sufficient evidence to substantiate his assertion that the endeavor's level of residential construction activity created the positions identified in the general manager's job creation list. We conclude the Petitioner's reliance on the general manager's letter is misplaced.

Here, the Petitioner has not offered sufficient evidence that the area where his companies operate is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Without sufficient information or evidence regarding the projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's projects would reach the

[7] It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id*.

level of "substantial positive economic effects" contemplated by *Dhanasar*. *Dhanasar*, 26 I&N Dec. at 890.[8] 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 a matter of discretion.

ORDER: The appeal is dismissed.

[8] *Chawathe*, 25 I&N Dec. at 376.