U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15821412

Date: SEP. 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 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 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 –
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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 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 record indicates that the Petitioner qualifies as a member of the professions holding an advanced degree.[4] 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 describes his proposed endeavor as follows:

> I intend to continue my career in the legal and business industries, working as a [l]egal [a]nalyst, and helping U.S. and foreign companies, as well as U.S. citizens and foreign individuals, deal with complex cross-border transactions, as well as foreign direct investments (FDI), through the provision of services in international law, corporate law, tax planning, and strategic business and legal planning in new ventures.
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> . . . .
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> The first stage of my proposed endeavor is to continue acting as an in-house counsel for multi-national companies, just like I am presently doing for [A-]. . . The second stage of my proposed endeavor is to launch my own consulting firm in the United States, where I will advise American and foreign entities on their inbound (U.S.-based) and outbound (international) business endeavors. To do this, I will also employ a team of consultants, particularly those with experience in tax law, corporate law, and international business.[5]

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.[6]

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.[7] Although the Petitioner's statements reflect his intention to provide valuable legal analysis and business consulting services for his employers and 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. For example, on appeal the Petitioner asserts that he will "enhance the country's national interests by elevating standards and policies to improve major national concerns, such as the United

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

[4] The Petitioner holds a master's degree in international law from the University of [redacted]

[5] The Petitioner also indicates that he "plans to sit for the bar exam, in order to become a licensed attorney in the United States."

[6] We acknowledge the articles and opinion pieces provided by the Petitioner that highlight the importance of the international business and legal industries in the United States. We also agree with the Director that the Petitioner's endeavor has substantial merit.

[7] 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.

States' financial crisis and the limited access to experienced legal professionals in the country." But he has not sufficiently articulated or documented *how* his legal analyst and business management activities would broadly impact his field. 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. *See Dhanasar*, 26 I&N Dec. at 893. Here, the Petitioner does not show that his proposed endeavor stands to sufficiently extend beyond his employer and clientele to impact his field or the nation more broadly at a level commensurate with national importance.[8]

The Petitioner provides reference letters, including one from R-S-, who is vice president of finance for A- his current employer, who explained:

> [The Petitioner] has always been a key trusted member of the senior leadership team of the region, based on his high-level of experience, and he is consulted and involved in strategic decision-making processes, as well as managing and supporting the most important and confidential matters relating to human relations, legal entity risk management, fraud investigation, and tax law interpretation and application, among others.

R-S- and other colleagues who provide reference letters favorably comment on the Petitioner's contributions to projects and initiatives in which they were mutually involved and emphasize his "widely lauded ability to gain an understanding of the local cultural and legal options. . ."[9] B-, former vice president of O-, discusses a methodology developed by the Petitioner involving "study, risk identification and consolidation, which allowed the company to save millions of dollars in consulting and to generate great efficiency in the execution of projects." However, he does not sufficiently identify, analyze, or discuss the nature of the specific work the Petitioner will perform within his prospective endeavor in the United States.[10]

Collectively considering the submitted evidence, we conclude that the Petitioner does not adequately describe or demonstrate how his future legal and business consulting work stands to rise to the level of having national importance within his field. The record does not show, for instance, that the specific work the Petitioner proposes to undertake will offer original innovations to advance the legal and international business industries, or that it otherwise has wider implications in his field.[11]

In his appeal brief, the Petitioner asserts that he has "nearly twenty years of career experience, [and] has directed companies into successful transnational trade agreements, provided legal solutions to complex cross-border transactions, and guided her [*sic*] companies towards mutually beneficial trade agreements for both parties." The Petitioner's skills and knowledge in his field relate to the second

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[8] While we may not discuss every document submitted, we have reviewed and considered each one.

[9] See, for instance, the letter of reference from H-D-, commercial director for P-.

[10] The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters 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)

[11] 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.*

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.

Furthermore, while the Petitioner asserts there is a "concerning lack of qualified legal professionals to materially assist with cross-border transactions and foreign direct investments" in the United States, 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. He contends that his undertaking "is capable of producing substantially positive effects and maintaining the U.S. as a leading nation, due to the ripple effects of his professional activities." He also asserts that his work "within the high-growth industry of law and trade [will result] in the overall financial health of Americans through increased revenue, employment of workers, contribution to the country's GDP, and an optimal environment." 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 projects 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 find 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