U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15805316

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 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

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree or its equivalent.[4] The sole 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.[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]

The Petitioner initially states his proposed endeavor is to:

> [C]ontinue my career in [s]upply [c]hain [m]anagement (SCM) by becoming [an SCM manager]. . . . to provide expert advice and guidance regarding the supply chain, and optimize the flow of materials, information, and finances as products move from supplier to customer. I will continue to manage the entire life cycle of a product, which includes how a product is acquired, allocated, and delivered. Through my analyzation and coordination of a company's supply chain, I will ensure the direct and timely movement of goods, people, or supplies in any industry that requires my unique skill set.

Later, the Petitioner asserts in his response to the Director's request for evidence (RFE):

> My overall endeavor in the United States is to offer my expertise to help U.S. companies in need of management and organization of their logistics and supply chain operations. . . . Increased business transactions will help not just the company I work for, but also U.S. workers, local economies, and the U.S. economy. Furthermore, I hope to use my knowledge and expertise as a Professor to teach and train the next generation of logistics experts.

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 services for his employers and potentially teach others SCM techniques in a college setting, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of

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

[4] The Petitioner presents copies of his diploma and transcripts for his bachelor of business administration degree from [redacted] in Brazil, and other evidence documenting at least five years of post-baccalaureate progressive work experience in the specialty. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

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

[6] We acknowledge the articles, reports, and opinion pieces provided by the Petitioner that highlight the importance of the SCM management field 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.

national importance. For example, on appeal the Petitioner emphasizes that he already contributes to the "development of the [SCM] field in the United States through his U.S. maintenance company, which focuses on "painting, cleaning, and consulting services." But he has not sufficiently articulated or documented *how* his building maintenance and consultant activities would impact his field, beyond providing services to his own clients. 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, we find the record does not show that the Petitioner's 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.

The Petitioner provides reference letters, including one from E-, who is a senior general manager for his former employer, who explains:

> [The Petitioner] acted as Engineering Manager, Building Maintenance, Supplies, and Logistics. With my new guidelines, [he] started to play great importance in the overall result of the company, and showed great competence in reducing the logistic cost by developing new suppliers and partners. During the following years goals were achieved, we had projects where the road, rail, and maritime logistics were integrated with great complexity where the costs were monitored and did not fall short of the goal. [The Petitioner] managed to make excellent management of his team with 12 people (purchasing coordinator, buyers, technicians and auxiliaries).

Other colleagues who provide letters of reference favorably comment on the Petitioner's managerial successes, and emphasize that he also "made significant contributions in the social program [] developed by the group [] that aimed to educate young people of the local community through classes within the company, as a teacher in some disciplines."[8] 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.[9]

Considering the record in its entirety, we conclude that the Petitioner does not adequately describe or demonstrate how his future SCM management work stands to rise to the level of having national importance within the SCM field. The record does not show, for instance, that the specific work the Petitioner proposes to undertake will offer original innovations to advance the aforementioned industry, or that it otherwise has wider implications in his field.[10]

On appeal, the Petitioner asserts that "his extensive expertise in trade and logistics as well as business management, has provided him [*sic*] to offer help to U.S. companies in need of management and organization of their logistics and supply chain operations. [He] has over 18 years of experience

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[8] See, for instance, the letter of reference from L-P-, Head of Supply Chain, for [redacted]

[9] 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)

[10] 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.*

working with various global operations." Throughout this proceeding, the Petitioner points to his education, SCM skills – including his knowledge of "sales and operations, planning, procurement, strategic sourcing, international business management, human resource management, quality control, and assurance," and his years of experience working in the SCM field. The Petitioner's knowledge, skills, and consulting experience, however, are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here under the first prong is whether the Petitioner has demonstrated the national importance of his proposed work.

Furthermore, while the Petitioner asserts there is a shortage of SCM professionals 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. 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