U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12263677

Date: SEP. 20, 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.
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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. To perform 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.[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. 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.[5]

The record includes reports, and articles relating to the economic impact of financial planning, the impact of foreign direct investment (FDI) on U.S. economy, jobs attributable to FDI, the business of banking, Brazil's ten biggest banks, and the size and strength of the Brazilian economy. The Petitioner also provided articles discussing U.S. hiring trends, the benefits of international trade and investment, a projected shortage of U.S. financial advisors, and the contribution of immigrant-launched businesses. The record shows that the Petitioner's proposed work as a financial analyst has substantial merit.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that he will "advance his career as a financial analyst in the [f]inancial [s]ervices [i]ndustry, developing business activities and promoting cross-border commercial transactions that will generate substantial revenues to the United States economy," noting that he will "pursue positions within companies that will certainly benefit from my distinguished abilities and in-depth knowledge of Latin America's business environment." Notably, the Director issued a request for evidence (RFE) giving the Petitioner with an opportunity to submit evidence to establish the national importance of his endeavor, to include a detailed description of the proposed endeavor, and an explanation as to why it is of national importance, supported by corroborative, documentary evidence.

The Petitioner responded to the RFE, in part, stating "my overall proposed endeavor in the United States is to serve as a financial analyst for any U.S. institution, organization, or company in need of my specialized knowledge." The Petitioner explained that he works for a multinational conglomerate that "advises clients who wish to expand their businesses and other assets, including individual investments, into the United States." He indicates that he will "primarily focus on providing financial advisory services to foreign clients, especially regarding investment opportunities in the U.S. market."[6]

On appeal, the Petitioner presents an additional business plan which discusses his intention to start a new business (R-) in which he will:

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

[4] As the Petitioner has established eligibility for the EB-2 classification as a member of the professions holding an advanced degree member, his assertions on appeal regarding his eligibility as an individual possessing exceptional ability, are moot.

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

[6] 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.

> [Help] U.S. individuals, families, and companies navigate the U.S. as well as the Brazilian markets and make informed investment decisions. Additionally, he will also provide consulting and market research services for Brazilian companies seeking expansion in the United States.

The Petitioner contends on appeal that "the Petitioner is in a position to help the young and elderly better manage their finances, and [will] bring benefits for the economy by assisting foreign businesses in making investments directly into our [country's] economy." The Petitioner points to a previously submitted opinion letter from a professor at B-C. The professor emphasizes the knowledge and skills the Petitioner gained throughout his academic and business career, noting that his "work as a business professional in the United States would clearly be in an area of substantial merit and national importance given the significant impact of the financial service industry on the U.S. economy in terms of jobs, labor income, and investments." He further opines:

> U.S. companies doing business or planning to do business in Brazil would benefit from the expertise and skills of a business professional such as [the Petitioner] who possesses an extensive knowledge of the business environment in Brazil. [His] work in the field of business management for U.S. companies doing business or planning to do business in Brazil would be work in an area of substantial merit and national importance."

However, the Petitioner's expertise acquired through his academic pursuits and career relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. Though the professor concludes "with the intimate knowledge of the business environment and financial services industry in Brazil, there is no doubt that [he] would work in the United States in an area of substantial merit and national importance," 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.[7]

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id* 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*. Here, the Petitioner's reliance on the professor's determination that a petitioner may meet the first *Dhanasar* prong based on the importance of the industry or profession in which he will work is misplaced.

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[7] Similarly, the Petitioner has provided reference letters from former employers and colleagues who outline his previous work accomplishments in Brazil and assert his services would be beneficial to the United States should he immigrate. While the letter writers hold the Petitioner in high regard, the submitted letters do not sufficiently establish the prospective impact of the *specific* endeavor(s) that the Petitioner will focus on should this petition be approved. 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).

We conclude that the professor's opinion letter lends little probative value to the matter here. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). For the sake of brevity, we will not address other deficiencies within the professor's analyses.

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 intention to provide valuable financial services for his U.S. employer 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. 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 record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer and clientele to impact the financial services industry or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, 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. The Petitioner's business plan provided on appeal indicates that:

- [R-] will start Year 1 having [the Petitioner] fully dedicated to establish[ing] the company and implement the brand awareness and marketing strategy [and R-] will also acquire first clients.
- At Year 5, in total, the company will end with 6 full-time employees and senior executives are planned to be hired: 1 CPA and 1 CFP in order to help [grow the] client portfolio.
- During the period of five years, total sales will start at US $75K achieving US $600K at the end of Year 5. . . the breakeven will be achieved 20 months after the initiation [of] the operation.
- [R-] will bring positive impact on the U.S. economy by generating taxes from payroll and profits totaling over US $300K paid during its five years of operation; [and] will [have] injected in the economy over US $ 1 million due to salary and several source providers to keep the business running.

Although the Petitioner's statements on appeal reflect his intention to start a new company to offer financial planning and international investment services to future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed business rises to the level of national importance. For instance, he has not shown that his company's future staffing and revenue levels stand to provide substantial economic benefits in the United States. As discussed above, the Petitioner puts forth estimates that his business will employ six staff-members and generate

$600,000 in revenue by the end of its fifth year of business operation.[8] Here, the Petitioner has not provided sufficient evidence to show that benefits to the U.S. regional or national economy resulting from his business 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.[9]

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.

[8] The Petitioner, however, does not adequately explain how these staffing and revenue forecasts were calculated.

[9] It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-,* 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). `