U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19805884

Date: FEB. 22, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a financial manager, 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 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.

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. –
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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. . . . 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 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)

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

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. Although the Director found that the proposed endeavor has substantial merit, the Director concluded that the record does not establish that the Petitioner's endeavor has national importance. The Director also concluded the record did not satisfy the second and third *Dhanasar* prongs. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as:

> [A] career plan . . . to work as a [f]inancial [m]anager, consulting U.S. companies on how to grow successfully, meet their goals, and remain profitable. Additionally, my expertise as a [f]inancial [m]anager in Latin America for international companies will allow me to work with U.S. companies doing business or planning on doing business in Latin America.

The Petitioner further asserted that her endeavor would accomplish the following:

- U.S. job creation through managing companies' finances, allowing them to save money and invest in labor;
- Providing financial services that are necessary to sustain a company;
- Analyze budget reports and financial documents to allow companies to meet their goals; and
- Help investigate financials to improve profitability and analyze markets for business opportunities.

In response to the Director's request for evidence (RFE), the Petitioner rephrased her description of the proposed endeavor as follows:

> [M]y overall proposed endeavor in the United States is to offer my expertise to assist U.S. companies in various sectors, that desire to become more profitable businesses, and/or expand and grow their business. I will do so by remaining up to date on the most recent market trends within the financial and business industries, and advising U.S. businesses, and individuals on how to sustainably grow their business by teaching them on how to make the right business decisions. I will apply my experience, including my more than 14 years in the global business market, to maximize the profitability of these institutions. Furthermore, I will continue to train other professionals in the companies I work for or with, to pass on the skills that I have developed and the experience I have gained.

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

Although the Petitioner did not specify any particular company for which she intends to work in pursuing her endeavor, she noted that after filing the petition she "served as a [f]inancial [c]onsultant for [redacted]" she "was the [s]enior [f]inance [m]anager ([h]ead of [f]inance [p]lant) at [redacted]" and she is "the [f]inancial [c]ontroller for . . . a luxury skincare company."

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that "it appears that the prospective impact would be limited to the [P]etitioner's prospective employer." The Director also concluded that the record does not "demonstrate how the endeavor would significantly impact employment levels regionally or nationally." The Director further concluded that "the [P]etitioner has not demonstrated that the specific work she proposes to undertake will offer original innovations that will contribute to the financial management field more broadly."

On appeal, the Petitioner asserts that her professional plan, submitted in support of the RFE, "explained how the proposed endeavor will have benefits beyond [her] employer and rise to the level of having national importance." The Petitioner also asserts that two new supporting letters and industry articles demonstrate that her endeavor will have national importance.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The proposed endeavor of providing generalized financial management services to a company or companies benefits those companies and clients. However, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner's employer and clients, as contemplated by the first *Dhanasar* prong. *See id.* at 889. For example, the Petitioner asserted in her professional plan that "the positive impacts that result from my knowledge, experience, and expertise will not be confined to a single business for whom I work with [*sic*]"; however, the Petitioner did not further elaborate how her specific endeavor would create substantial positive economic effects beyond her direct employer. Similarly, although the Petitioner asserted that her endeavor would cause "U.S. job creation through managing companies' finances, allowing them to save money and invest in labor," the record does not establish how many jobs the proposed endeavor would create, the type of jobs the endeavor would create, or the employer(s) for whom the jobs would be created. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361.

Turning to the support letters, the one-page letter from the vice president of the "luxury skincare company" addressed above, submitted on appeal, does not establish the Petitioner's eligibility. The vice president's letter asserts that the Petitioner "is involved in the development, manufacturing and/or distribution of COVID-19 response supplies necessary to limit the adverse public health impact of the

pandemic." However, the Petitioner's initial description of the proposed endeavor when filing the petition in 2018—prior to the COVID-19 pandemic—made no mention of being "involved in the development, manufacturing and/or distribution of COVID-19 response supplies," or medical supplies in general. A petitioner must establish eligibility at the time of filing a nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). Because the luxury skincare company letter addresses activities beyond those described by the Petitioner at the time of filing, in response to a pandemic that had yet to occur at the time of filing, the letter presents a new set of facts and may not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. Moreover, even if the letter could establish eligibility, we note that it does not provide sufficient details about the "COVID-19 response supplies" developed, manufactured, or distributed by the luxury soap company and the specific role the Petitioner performs in relation to that project in order for us to assess its potential national importance.

Similarly, the second support letter submitted on appeal does not address how the "specific endeavor that the foreign national proposes to undertake," *see Dhanasar*, 26 I&N Dec. at 889, may have national importance. Instead, the managing director of a self-described financial consulting and business development services company asserts in the half-page letter that the company "inten[ds] to employ [the Petitioner] . . . full-time as a [s]enior [f]inancial [c]onsultant" and that the Petitioner "will be a great asset not only to our group but the US [*sic*] industry as a whole." However, the letter does not elaborate on how the Petitioner would be a "great asset" or provide any details in order to establish substantial positive economic effects the endeavor would accomplish in order for it to rise to the level of national importance. *See Dhanasar*, 26 I&N Dec. at 889. The other support letters in the record, submitted prior to the appeal, provide similar assertions that do not establish the potential national importance of the endeavor.[3]

The Petitioner also generally asserts that the Director "did not consider the bulk of submitted evidence, including . . . [prior] letters of recommendations, and support letters." However, the Petitioner does not elaborate on which prior letter of recommendation or support letter she believes the Director did not consider and how, specifically, that evidence establishes the proposed endeavor has national importance. On the contrary, several paragraphs of the Director's decision address how the "testimonial letters" in the record do not establish that the proposed endeavor has national importance. Upon review of the record in its entirety, we agree with that conclusion.

The Petitioner further asserts on appeal that a two-page excerpt of a seven-page article published by Fortune and a two-page excerpt of a four-page article published by EconomicsHelp.Org "demonstrate in detail how individual companies have significant influence and inseparable connection to the national economic development." However, neither article mentions the Petitioner, her endeavor, or how the specific endeavor may have substantial positive economic effects that rise to the level of national importance. *See id.* Instead, they generally address "establishments that temporarily shut down due to the pandemic [that] are now out of business" and "[t]he role of firms in the economy," respectively. The Petitioner also references on appeal "her exceptional knowledge and skills in providing guidance in financial strategies and planning, capital raising, financial management and risk management, [and] financial system implementation." However, although the Petitioner's

[3] Although we discuss only examples of each of the letters' content for brevity, we have reviewed the record in its entirety.

qualifications and prior career accomplishments are material to the second *Dhanasar* prong, they do not address how the prospective endeavor may have national importance. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

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.