U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19804359

Date: FEB. 24, 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 legal analyst, 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.

(B) Waiver of job offer –

(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 with law firms, businesses or corporations to provide expert advice as a [l]egal [a]nalyst." The Petitioner further asserted that his endeavor would entail the following:

- Consulting on activities in the legal landscape and business environments of Brazil;
- Participating in due diligence to research identify, and evaluate legal contingencies;
- Aid in any possible commercial benefits for businesses, corporations, and individuals when doing business in developing markets;
- Proposing solutions to minimize the burden and reduce the risk of any and all pertinent legal issues;
- Advising companies looking to do international business on international laws, especially those that apply in Brazil; and
- Creating a smooth transition for U.S. individuals or entities, especially those looking to do business in Brazil, Latin America, and abroad.

The Petitioner also asserted, "I am confident I will contribute and generate revenue and jobs within the United States, should my application be approved."

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

> [M]y overall proposed endeavor in the United States is to work on nationally important investments, as well as contribute to cross-border activities through my extensive experience, knowledge, and contacts. I intend to pursue U.S. companies that will benefit from my distinguished abilities, and in-depth knowledge of the many features regarding the United States, Brazil, and Latin America's investments, taxation, and legal systems.
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> . . .
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> Another focus of mine within the U.S. will be to earn a paralegal degree and start a career.

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

The Petitioner also asserted in response to the RFE:

> Currently, I serve as CEO and Owner of [redacted] [*sic*] and [redacted] founded in Florida, providing services to Brazilians living in the U.S., and those Brazilians living in Brazil and to U.S. companies and individuals, focusing on accounting, tax, legal, business development, and investments. I am looking for American partners in order to develop my consulting company.

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that "[the Petitioner] has not established that his proposed work has implications beyond his current employer (or any prospective employers or self-owned company), their business partners, alliances, clients or his workplace at a level sufficient to demonstrate the national importance of his endeavor." The Director also concluded that "[the Petitioner] has not shown that his proposed endeavor offers broader implications, significant potential to employ U.S. workers, or substantial positive economic effects."

On appeal, the Petitioner asserts:

> [The] proposed endeavor serves nationally important matters, including the U.S. economy, explicitly by:
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> - Spurring economic initiatives on behalf of the United States, specifically serving high-growth, and economically important, industries—rebuilding small U.S. businesses that have been greatly impacted due to COVID-19.
> - Prioritizing the domestic job market—particularly because [the Petitioner's] business actions within the consulting services relate to employment growth, and because [the Petitioner] will employ U.S. workers within his companies and projects in the nation.

The Petitioner also asserts on appeal that "the proposed endeavor is nationally important because of the ripple effects it generates upon the U.S. business industry." He asserts that previously submitted letters of recommendation, an industry report, and articles "demonstrat[e] the national importance of the Petitioner's proposed endeavor." The Petitioner also emphasizes on appeal his "outstanding achievements, and record of accomplishments."

The Petitioner presents a new set of facts on appeal that do not establish eligibility. 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). The Petitioner's initial description of the proposed endeavor, submitted with the petition in 2018, did not address "rebuilding small U.S. businesses that have been greatly impacted due to COVID-19," in part because the COVID-19 pandemic had yet to occur. Similarly, the Petitioner's initial description of the proposed endeavor did not address "[p]rioritizing the domestic job market." On the contrary, the Petitioner asserted that his endeavor would "especially" focus on "U.S. individuals or entities . . . looking to do business in Brazil, Latin America, and abroad." Because the Petitioner's assertions on appeal regarding "rebuilding small U.S. businesses that have been greatly impacted due to COVID-

19" and "[p]rioritizing the domestic job market" are inconsistent with the stated endeavor at the time of filing, they present 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.

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 Petitioner does not specify on appeal which letters of support and articles establish that the specific endeavor has national importance, and how that evidence does so. The letters in the record generally address work the Petitioner performed in the past in Brazil and his prior career accomplishments, not his prospective endeavor in the United States. Similarly, the articles and industry report in the record provide generalized information about Brazil and industries including business and legal services; but they do not address the Petitioner, his proposed endeavor, and how the specific endeavor will have substantial positive economic effects that rise to the level of national importance. *See id.* Relatedly, although the Petitioner's qualifications and prior career accomplishments, discussed on appeal, 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 he 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.