U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18887327

Date: JAN. 13, 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 mechanical engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 although the Petitioner qualified for the underlying EB-2 visa classification, he 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). *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[1], 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] *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.[2]

II. ANALYSIS

The Director found that the Petitioner qualified for the underlying EB-2 visa classification. 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.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that his proposed endeavor was "doing high-end engineering work in the field of Mechanical Engineering." The Director issued a request for evidence (RFE) asking the Petitioner to provide a more detailed proposed endeavor. In response, the Petitioner submitted a statement of intent indicating his proposed endeavor is to "continue working in the field of Mechanical Engineering and complex Business Systems Development in the American oil and gas sector" and asserted his endeavor would impact hundreds of millions of dollars in economic activity. The Director then denied the petition, concluding the Petitioner had not submitted documentary evidence supporting that claim that his endeavor would have an impact on economic activity and, therefore, his proposed endeavor did not have substantial merit. On appeal, the Petitioner submitted a more detailed statement of interest and further explaining how the business documents submitted on appeal indicate his expertise was used to create millions of dollars of economic activity through his employer. Here, we withdraw the Director's determination that the Petitioner's proposed endeavor does not have substantial merit but find his proposed endeavor does not have national importance.

The record indicates the Petitioner works in the oil and gas industry where he applies his expertise in integrated engineering solutions and mathematical optimization across a range of large-scale projects. In addition, the Petitioner mentioned he currently works for [redacted] as a global tender manager.[3] The Director, in his decision to deny the petition, concluded that the Petitioner had not demonstrated that his proposed work as a mechanical engineer, supporting his company's projects and clients, was sufficient to meet the first prong of the *Dhanasar* framework. The Director stated that the record did "not demonstrate an endeavor which offers broader implications for the field, will further human knowledge, or offer[s] significant economic impact for the nation." On appeal, the Petitioner asserts that he is a mechanical engineer and contends that he is "in pole position to help address the challenges ahead in the O&G industry."

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake."[4] *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we

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

[3] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about this position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

[4] While the Petitioner argues the oil and gas industry has national importance to the United States, the issue here is not the value of the mechanical engineering field or oil and gas industry, but rather whether the Petitioner's specific proposed endeavor as a mechanical engineer and complex business systems development in the oil and gas sector rises to the level of national importance.

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.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In his appellate brief, the Petitioner points to his background, education, work experience, and specialized training in his field. The Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.[5] The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. 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.

In support of his proposed endeavor, the Petitioner submitted various letters from his colleagues at [redacted] praising the Petitioner's expertise and contribution to [redacted].[6] For example, [redacted] commercial director for oilfield services at [redacted], provided a letter discussing the Petitioner's expertise as an engineer and future strategist which resulted in [redacted] being awarded millions of dollars in contracts since 2017. Another letter from [redacted] sales director at [redacted] stated the Petitioner developed a Technology Readiness Review used at [redacted] Both letters claim the Petitioner has had a global impact while working at [redacted] because his expertise has allowed his employer to obtain large work contracts in other countries. Additionally, the Petitioner asserts his expertise and advances have been duplicated, applied, and forwarded throughout other gas projects such as projects awarded in Norway, Malaysia, UAE, Russia, and Brunei. In support, the Petitioner submitted numerous documents from his employer, [redacted] indicating the Petitioner's processes have been applied to various [redacted] projects and contracts. While the Petitioner's colleagues at [redacted] emphasize the size of the contracts with which he was associated, he has not demonstrated that an impact on this single company and its projects necessarily equates to a broader impact on the oil and gas industry.

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 engineering services for his prospective U.S. employer and its 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. *Id.* at 893. Here, we conclude the

[5] To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing her expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

[6] While we only discuss a sampling of the letters in our decision, we reviewed all submitted letters in the record.

record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer and its clientele to impact the mechanical engineering field or oil and gas industry 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. Specifically, he has not shown that his mechanical engineering and complex business systems development activities stand to provide substantial economic benefits in the United States. While the Petitioner submitted internal [redacted] documents indicating the Petitioner has participated in activities allowing [redacted] to obtain lucrative contracts, the evidence does not demonstrate any benefit to the regional or national economy outside of his company. Here, the Petitioner has not submitted documentary evidence that would demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertakings would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

While the Petitioner argues his expertise "unquestionably leads to job creation," he has not submitted evidence indicating that his specific projects would employ a significant population of workers in an economically depressed area or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increases in employment or income attributable to his endeavor stand to substantially affect economic activity. 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.[7]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[7] Regarding the Director's discussion of Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, we adopt and affirm the Director's November 13, 2019 decision on those issues. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).