U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19999017

Date: MAR. 17, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks 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 she 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 evidence and a brief asserting she is eligible for a national interest waiver. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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, USCIS may, as a 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, regarding 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) 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]

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[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The issue on appeal 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 her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[3]

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." *See Dhanasar*, 26 I&N Dec. 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.* 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 the record before the Director, the Petitioner asserted that she would pursue her endeavor in the banking industry, in a management position for B-, a large U.S. banking institution. In her January 2021 letter she described her endeavor as follows:

> [M]y goal is to help [B-] develop our employees to be great bankers, so they can help as many Americans as possible in their financial lives. . . . I want to use my Human Resources knowledge to show them they can make a difference at their home, at their work, at their community and if we each do a little, we will be able to achieve so much together. . . .

The Petitioner emphasizes that she is skilled at developing employees, turning many of her subordinates into leaders in their own right within her organization. She also recounts how she teaches her clients to make better financial decisions so that they can "achieve the American dream," and how she positively affects the U.S. economy through the increased revenues earned by her employer as a result of her work as a relationship manager. The Petitioner also provided letters of recommendation and evidence of her work product which she produced as a banker and in her former managerial positions in the hospitality industry. The Director denied the petition, in part, concluding that the Petitioner did not establish how her work as a bank manager stands to produce benefits to the nation beyond those accruing to her employer and its clients. He determined the evidence presented did not establish that the Petitioner's proposed employment activities would have broader implications for the field, a significant potential to employ U.S. workers, or other substantial positive economic effects that would rise to the level of national importance. *See Dhanasar*, 26 I&N Dec. at 889.

On appeal, the Petitioner indicates that "the reference letters from my former and current peers and bosses, plus some of the documents from my work [show] that I am great in what I do and that makes me an asset for the company." For instance, her former manager, [redacted] states in her

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

letter that the Petitioner's role at the bank is to "interact with clients and manage their financial priorities which includes opening and closing accounts, handling complex account issues, helping clients establish credit and create positive money habits." While this letter and other submitted evidence suggests the Petitioner is an exemplary banking employee, the evidence does not sufficiently demonstrate that her employment within the banking industry will be of national importance.

The Petitioner also newly asserts on appeal that she will start her own business as a "delivery service partner" [DSP] for A-, a multinational e-commerce company. She indicates:

> Once I have a route, I will be opening a small corporation, leasing 20 vans, hiring an attorney, and most important I will be hiring 40-50 employees to start up. . . . I am sure that I will succeed just like I did with [a restaurant franchise organization] and [B-].

However, prior to the filing of the appeal, the Petitioner intended to purse an endeavor within the banking industry as a manager for a U.S. banking institution. Her initial description of her proposed endeavor did not include any plans to start a company to provide DSP services for an e-commerce company. The Petitioner's revised plans to establish a new company and focus her endeavor on this business presented after the filing date cannot retroactively establish eligibility. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. § 103.2(b)(1).

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to decide whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. *See Dhanasar*, 26 I&N Dec. at 889-90. Because the Petitioner has not provided consistent information regarding her proposed endeavor, we cannot conclude that she meets either the first or second prong, or that she has established eligibility for a national interest waiver. We acknowledge that the Director determined in the denying the petition that the Petitioner had met the second *Dhanasar* prong. However, in light of the inconsistent evidence submitted on appeal about her proposed endeavor, we withdraw the Director's determination in this regard. Further analysis of her eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose. 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).

III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework, we conclude that she has not demonstrated that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.