U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22678632

Date: SEP. 29, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an engineer, 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. –
>
> (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 noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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 noncitizen 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 noncitizen. 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 noncitizen's qualifications or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together,

[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*).

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. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. 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 generally described the proposed endeavor as "employment in the field of [a]dvanced [e]lectrical [e]ngineering, especially in the increasingly important American oil and gas sector." In response to the Director's request for evidence (RFE), the Petitioner reiterated that the "proposed endeavor is to continue working in field [*sic*] of [a]dvanced [e]lectrical and [e]lectronics [e]ngineering in the [o]il & [g]as sector." The Petitioner asserted that he has been employed by [redacted] since 2007 and that his current job title is training manager. The Petitioner also asserted that his duties include being "in charge of the [redacted] Maintenance Academies I & II for all [redacted] tools maintenance" and "play[ing] a leading role in designing and producing technical guides used by [i]nstructors and [e]ngineers at large-scale projects all over the world . . . either flown to Texas or link-in virtually to learn my skills and then implement those advances all over the world."

The Director acknowledged that the proposed endeavor has substantial merit; however, the Director found that the Petitioner "does not detail how his specific work as a training manager and instructor will have wide-ranging implications in the field, or how it would otherwise offer original innovations that will contribute to the broader oil and gas industry." The Director also found that the "proposed endeavor points to a single impact with his employers and their clients." The Director concluded that the record does not establish that the proposed endeavor has national importance because it does not demonstrate that the proposed endeavor will have broader implications in the field.

On appeal, the Petitioner submits a one-page statement accompanied by a brief. Both documents contain assertions that do not appear to match the underlying decision. For example, in the statement, the Petitioner asserts, "In terms of legal errors, the evidence I submitted did legally satisfy the '[s]ubstantial [m]erit' criterion." However, the Director concluded in the decision, "USCIS finds that the [P]etitioner's proposed endeavor has substantial merit." More problematically, the brief specifically references the endeavor of an individual whose name is entirely dissimilar to the Petitioner's name, I- O-, in at least 20 separate paragraphs. Similar to the Petitioner's statement, the brief also asserts a procedural history unsupported by the record. For example, the brief asserts that "the AAO incorrectly and improperly applied the legal criteria for reviewing an NIW approval." However, as noted above, the Petitioner appealed a decision of the Director of the Texas Service Center; he did not submit a motion to reopen or to reconsider a decision of the Administrative Appeals Office, because we have not entered a decision in this matter prior to this decision.

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

The Petitioner asserts on appeal:

> USCIS erroneously argues that [redacted] failed [*sic*] to satisfy the "[n]ational [i]mportance" criterion. The TSC has made a major legal mistake by erroneously applying the legal standard for this criterion. Please note that in *Dhanasar*, the AAO changed the traditional "[n]ational in [s]cope" criterion that was in the *NYSDOT* case, to "[n]ational [i]mportance."

The Petitioner also asserts on appeal:

> The submitted evidence including those provided at the time of filing of this petition shows how [redacted] specific work and expertise is a primary contributor to [redacted] ability to generate millions in economic benefits to the United States which unquestionably leads of [*sic*] job creation.
>
> Furthermore, the evidence submitted with his case demonstrated, far beyond the legal standard of 'preponderance of evidence' that his advances specifically in his field have already been used, duplicated, applied, and forwarded throughout numerous large-scale oil and gas projects—including projects that involve numerous other companies and hundreds of engineers. This is how advances in his field are shared—in the real world, both nationally and internationally!

The Petitioner further asserts on appeal:

> Also concerning the "[n]ational [i]mportance" of his work, the record demonstrates that (in a manner similar to that of Mr. Dhanasar of the *Dhanasar* case) [redacted] submitted probative expert letters from individuals holding senior positions throughout his industry describing the importance of [redacted] expertise in electronics engineering and the development of complex business development systems in the [o]il & gas sector, especially as it relates to U.S. strategic interests.

The Petitioner also asserts on appeal:

> Yet another legal error made by the TSC is that the TSC failed to acknowledge that [redacted] expertise impacts many people and a tremendous amount of economic activity outside his employer. . . . In light of the miniscule impact that Mr. Dhanasar had outside of his small and obscure university campus, the benefits of [redacted] work certainly go far beyond his specific employer.

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 [noncitizen] 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.

We first note that the record does not establish that [redacted] is an alias of the Petitioner. Therefore, the Petitioner's repeated discussion of [redacted] endeavor, and of the Director's decision in [redacted] matter, are inapposite to the Petitioner's matter, and may not establish eligibility. *See, e.g.*, 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to "establish that he or she is eligible for the requested benefit at the time of filing the benefit request," not to establish that someone other than a petitioner is eligible for the requested benefit).

The record does not support the Petitioner's assertion that his "proposed endeavor . . . to continue working in field [*sic*] of [a]dvanced [e]lectrical and [e]lectronics [e]ngineering in the [o]il & [g]as sector" has national importance. The record contains a [redacted] document, indicating that its information was "presented by [the Petitioner]." Although the document indicates that [redacted] copyrighted it in 2019, it does not indicate how, when, where, and the audience to whom the Petitioner presented the information. The training document specifically states that "[t]he information contained in this document is company confidential and proprietary property of [redacted] and its affiliates. It is to be used only for the benefit of [redacted] and may not be distributed, transmitted, reproduced, altered, or used for any purpose without the express written consent of [redacted] The record contains other documents, such as a [redacted] student guide, crediting the Petitioner, among others, as a "subject matter expert," bearing a similar copyright notice that "[t]his information is confidential and is the property of [redacted] Do not use, disclose, or reproduce without the prior written permission from [redacted] If this document is printed, ensure that it is kept secure and only shared with [redacted] employees directly involved with the service." Accordingly, the training materials presented by the Petitioner indicate that their intended use is "only for the benefit of [redacted] with limited possible exceptions.

The record also contains printouts of emails exchanged with the Petitioner by individuals who remotely attended training sessions conducted by the Petitioner; however, the email addresses used by the trainees include the [redacted] domain or their signature blocks indicate that they are employees of [redacted] We note that the record contains emails from employees of two separate companies, thanking the Petitioner for his instruction; however, both emails specifically indicate "Date: * No Date *." Therefore, neither of the emails establish a fact as of the petition filing date. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to "establish that he or she is eligible for the requested benefit at the time of filing the benefit request"). Accordingly, the record indicates that the Petitioner's endeavor of training his employer's employees will benefit his employer and, by extension, his employer's clients. The record does not establish how his training sessions may have "national or even global implications within a particular field," as opposed to implications within a particular employer and its clients. *See Dhanasar*, 26 I&N Dec. at 889-90.

The record does not support the Petitioner's assertion that his endeavor—training his employer's employees—creates jobs. Instead, the record indicates that the Petitioner trains the employees that his employer has hired. The record does not establish any causal link between the Petitioner's training activities and his employer's—or any other employer's—hiring practices, nor does it specify the number of jobs the Petitioner's endeavor is anticipated to create in any particular location during any

particular time period in order for us to determine whether the endeavor may have "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See id.* at 889-90.

Additionally, the Petitioner's reliance on expert letters from individuals holding senior positions throughout his industry is misplaced. The record contains letters of recommendation from a training and development manager of [redacted] the North America sales director of [redacted] the "global education center leader" of [redacted] and the technology director of [redacted] services of [redacted] Although the letter authors may hold senior positions within the Petitioner's employer, the record does not establish that they hold "senior positions throughout his industry." More to the point, the letters generally discuss the Petitioner's qualifications, which relate to the second *Dhanasar* prong—whether he is well positioned to advance the proposed endeavor—rather than relating to the first *Dhanasar* prong—whether the proposed endeavor has both substantial merit and national importance. *See id.* at 889-90.

Finally, the record does not support the Petitioner's assertion on appeal that "[y]et another legal error made by the TSC is that the TSC failed to acknowledge that [redacted] expertise impacts many people and a tremendous amount of economic activity outside his employer." The Director acknowledged that "the potential prospective impact of the [P]etitioner's proposed endeavor points to a single impact with his employers *and their clients*" (emphasis added). The Director also acknowledged that the proposed endeavor entails the Petitioner training his employers employees and that their work will, in turn, benefit his employer's clients. However, as discussed above, the record does not establish how the Petitioner's endeavor of training his employer's employees will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or 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.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; 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.