U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-L-

DATE: DEC. 8, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a supply chain 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). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding 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 additional documentation and contends that she is eligible for a national interest waiver under the *Dhanasar* framework.

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 recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.[1] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

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.

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

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]

II. ANALYSIS

The Director found that the Petitoner qualifies as a member of the professions holding an advanced degree.[3] The sole 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.

In a letter accompanying the petition, the Petitioner first indicated that she would perform search engine optimization research. In response to the Director's November 2016 request for evidence (RFE) under *NYSDOT*, the Petitioner listed her proposed job title as "mathematical statistician," but also stated that she was contemplating working for a "healthcare company." Subsequently, in response to the Director's March 2017 RFE under *Dhanasar*, she described her proposed endeavor as "statistical analysis and optimization research . . . in the realm of information technology." The Director denied the petition finding that the Petitioner had not identified her proposed endeavor with adequate specificity or consistency to demonstrate that it has substantial merit and national importance, that she is well-positioned to advance it, and 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 the decision denying the Petition, the Director stated three times that the Petitioner's statements regarding her proposed endeavor were not "definitive." We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether she satisfies the *Dhanasar* framework, she need not have a job offer from a specific employer as she is applying for a waiver of the job offer requirement. Despite the aforementioned problematic language in the Director's decision, the record before her supported the determination that the Petitioner's statements were "inconsistent with respect to [her] area of intended employment" and that she provided insufficient information concerning her proposed endeavor. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

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

[3] The record reflects that the Petitioner received a master of engineering (2007) from [redacted] in Japan and a master of business administration (2012) from [redacted] in Korea.

In her appeal brief, the Petitioner now indicates that she intends to work "as a supply chain (logistic information) analyst" for a company that manufactures and distributes organic foods. We note that this work is not consistent with any of the Petitioner's previously proposed activities. Regardless, for the reasons discussed below, the Petitioner has not demonstrated her eligibility for a national interest waiver based on this proposed endeavor.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner explains that, in her intended role for Pulmuone, she is "in charge of transportation route planning for organic products." The Petitioner further states: "I work closely with the supply chain management team to understand their data and research needs and to conduct research accordingly in the traffic route optimization. . . . My job is to make strategic and operational decisions, optimize and manage their logistics system processes efficiently." The record includes a May 2017 letter from reflecting that the Petitioner "will hold the position of Research Analyst for Supply Chain Department located in California." In addition, the Petitioner submits two articles about acquisition of and She also submits product listings and two coupon contracts for organic spinach.

In describing the value of her work, the Petitioner states: "A vitally important operational decision concerns finding optimal vehicle routes because efficient routes offer great potential to reduce costs and to improve service quality." The Petitioner further explains that her "main contributions are to synchronize trucks and log-loaders and to extend the log-truck scheduling problem to the weekly horizon, where inventories at are taken into consideration in order to work in a just in time mode." We find that the Petitioner's proposed route planning and vehicle scheduling work has substantial merit, as it is aimed at supporting her employer's timely and efficient distribution of organic food products across the United States.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of her work. She asserts that distributes "a number of organic food products which go to almost every region in the U.S." and that her "work has an impact on the national organic food distribution network." The Petitioner, however, has not established that her proposed work for has implications beyond her company and its customers at a level sufficient to establish the national importance of her endeavor.[4] For example, the record does not show that the specific work she proposes to undertake offers original innovations that advance the industry, or otherwise has broader implications in the supply chain management field. As the Petitioner has not established that her specific endeavor's prospective impact supports a finding of national importance, she has not met the first prong of the *Dhanasar* framework.[5]

[4] 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.

[5] In addressing the second prong of the *Dhanasar* framework, the Petitioner mentions that she is writing a paper for her Ph.D. dissertation based on data from her project at to improve the company's log-truck scheduling. While

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. The Petitioner submits academic records, her curriculum vitae, and evidence of her graduate work (research articles and conference papers). She also offers reference letters from her professors and colleagues discussing her research projects and work experience in the areas of chemical and materials engineering, healthcare data analysis, search engine optimization, and route planning. For example, a professor in the Department of Statistics and Applied Probability at states that the Petitioner has done "statistical analysis on the transportation analysis" and that "[h]er research improves the understanding about information management in terms of the route planning quality." In addition, a professor of business and economics at indicates that the Petitioner investigated "the equilibrium revenue structures of two competing E-commerce platforms that are horizontally differentiated." further notes that the Petitioner's "study demonstrates that when transportation cost is small and the degree of competition among sellers is weak, both platforms tend to adopt advertising revenue structures in equilibrium."[6]

The evidence discussed above is sufficient to demonstrate that the Petitioner is well positioned to advance her proposed endeavor of analyzing Pulmuone's logistical operations. Accordingly, she has established that she satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, 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. Here, the Petitioner claims that she is eligible for a waiver due to her knowledge and experience, fluency in three languages, and a lack of qualified U.S. workers for her current position. However, as the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

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the Petitioner indicates that she will continue with her Ph.D. research until she graduates, she has not identified conducting and publishing academic research as her proposed endeavor. Rather, the record shows that she intends to perform supply chain analysis and traffic route optimization for

[6] Although the Petitioner's graduate work at involved operations management research, we note that her proposed endeavor at focuses on her company's Supply Chain Department projects. Nevertheless, had the Petitioner demonstrated that she would be primarily engaged in conducting and disseminating original research to others in the field of operations management, she has not shown that her work constitutes a record of success or progress in this field, or has garnered degree of interest in her work from relevant parties, that rises to the level of rendering her well positioned to advance such an endeavor.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of E-L-*, ID# 784849 (AAO Dec. 8, 2017)