U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-A-S-

DATE: DEC. 12, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an aerospace 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). 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 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 asserts that he is eligible for a national interest waiver. In September 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In response, he provides an additional statement and further evidence.

Upon *de novo* review, we will deny the motion.

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 record reflects that the Petitioner received master of science degrees in applied mathematics, aerospace engineering, and applied statistics from and a master of business administration from Accordingly, the Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, and we agree with this determination. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus the labor certification, is in the national interest according to the three-pronged analysis set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner previously stated that he intends to work in the field of aerospace engineering, to "design, construct, and test aircraft, missiles, and space craft." He indicated that he is "seeking to become an associate research developer in either applied mathematics or aerospace engineering" focusing on the local or international market. He also stated that he wishes to work "with governmental agencies which are engaged in the practice of the full spectrum of general engineering doctrines and prototype research and development, for sensitive governmental programs, defense, or a commercial enterprise." At the time of filing, the Petitioner was working as an adjunct faculty member and lecturer in mathematics at several colleges.

In our RFE we requested additional information explaining the Petitioner's proposed endeavor, along with evidence documenting the "potential prospective impact" of his work. We noted that, as the Petitioner is applying for a waiver of the job offer requirement, he need not have a job offer from a specific employer, but that information about the nature of the proposed endeavor is necessary for us to determine whether it has substantial merit and national importance.

The Petitioner's response to our RFE maintains that he wishes to work in the area of "defense projects" such as design and performance of next generation planes and space endeavors. He also provides a copy of an internet job advertisement for an "entry-level operations research engineer"

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

position, the duties of which include, in part, "providing and maintaining simulations and analyzing new concepts in air and missile defense." The Petitioner does not explain the significance of this job advertisement or clarify whether it is meant to illustrate the type of position he intends to seek. Regardless, while work on "defense projects" has substantial merit, the Petitioner does not offer sufficient detail regarding his specific proposed engineering work to demonstrate that it will advance research initiatives, impact the field of aerospace engineering research more broadly, or otherwise have implications rising to the level of having national importance. Thus, the Petitioner's submissions are insufficient to establish that his proposed work as an engineer meets the first prong of the *Dhanasar* framework.

Additionally on appeal, the Petitioner avers that he will continue to teach and mentor students in science, mathematics, and engineering fields at community colleges and universities. He indicates that his "lifelong goal is to teach and instill in students a passion and long-term interest towards STEM fields." We find that the Petitioner's proposed teaching duties at the college level have substantial merit. The record, however, does not establish that his course instruction would impact his endeavor more broadly, as opposed to being limited to the students at the institution where he teaches. Accordingly, without sufficient documentary evidence of their broader impact, the proposed teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, 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.

As the Petitioner has not established that the prospective impact of either his engineering activities or his teaching supports a finding of national importance, he has not met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Petitioner submitted academic records and various awards and certificates, including several for participation, completion, and attendance for training courses and seminars relating to his professional development. As discussed below, we find that the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, that rises to the level of rendering him well positioned to advance his proposed engineering or teaching endeavor. *See Dhanasar*, 26 I&N Dec. at 890.

The Petitioner maintains that his education, knowledge, and skills in aerospace engineering and mathematics show that he is well positioned to advance his proposed engineering work. He provided letters of recommendation reflecting that he has worked on projects during his graduate degree programs. For example, [redacted] professor of mechanical and aerospace engineering at [redacted] states that the Petitioner "developed [redacted] to analyze supersonic [redacted] and use the code to determine the contour of a minimum-length nozzle with [redacted]" Similarly, [redacted] professor of mechanical and

aerospace engineering at [redacted] also commends the Petitioner's work on the [redacted] analyzing supersonic [redacted] in rocket nozzles. However, neither recommender explains the significance of this project or the Petitioner's contribution, nor does the record indicate that he disseminated his work in the field, either in academic journals or conference presentations. While the Petitioner may have provided support and assistance to the [redacted] project, the record does not support the claimed significance of his role in this or other research endeavors. He has not shown, for example, that his research amounts to a record of success in his field, that his contributions generated interest among relevant parties, or that this research experience otherwise renders him well positioned to advance his proposed engineering work on defense projects.

In addition, the Petitioner has not demonstrated that he is well-positioned to advance his proposed teaching endeavor. The Petitioner provided letters of recommendation from former colleagues, supervisors, and teachers, attesting to his academic accomplishments and congenial manner. The references discuss the Petitioner's student achievements, dedication, and academic integrity. For example, a letter of support from [redacted] professor of statistics at [redacted] stated that he "has an absolute mastery of the mathematics which is taught at the community college level" and that he "communicates clearly" and "relates very well with others." While the references offer prospective opinions that the Petitioner's background and skills will make him a good teacher, they do not speak to his actual experience as a teacher, nor does the record include other documentation showing a record of success in his past teaching efforts. Accordingly, the Petitioner has not provided evidence that he is well positioned to advance his proposed endeavor of teaching STEM courses at the college level. We find therefore that the record is insufficient to establish that either his teaching activities or his research render him well positioned under 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. However, as the Petitioner has not established the national importance of his proposed endeavor(s) as required by the first prong of the *Dhanasar* framework, or offered sufficient evidence that he is well positioned to further such endeavors, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

ORDER: The appeal is dismissed.

Cite as *Matter of R-A-S-*, ID# 583627 (AAO Dec. 12, 2017)