U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17587554

Date: JAN. 26, 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 geoscientist, 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. –
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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.

(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 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] 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*).

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 qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor in the field of geological research and development, the Director concluded that the record does not establish that the Petitioner's endeavor has national importance. The Director also concluded the record did not satisfy the second and third *Dhanasar* prongs. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the endeavor as a general plan "to continue working in the field of advanced [e]xploration [g]eology." The Petitioner also submitted a résumé, indicating that, from "Jan 2015-Present," he has worked as an "[e]xploration [g]eoscientist" and that his duties involve "[d]elivering structural models and providing geological input in the velocity building process to the depth imaging team" on a "[m]ulticlient [p]roject" for his employer. Although the Petitioner also submitted various letters of recommendation from his coworkers, he did not initially elaborate further on what the proposed endeavor would entail.

In response to the Director's request for evidence (RFE), the Petitioner submitted a one-page personal statement, in which he reiterated that the endeavor is a plan "to continue doing work as an [e]xploration [g]eoscientist in the [o]il & [g]as [s]ector." The Petitioner elaborated that his existing, and continuing, "responsibilities include providing technical and operational knowledge and guidance on seismic interpretations for the large-scale oil and gas projects as well as delivering structural models and providing geological input in the velocity building process, and other related activities."

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that "the evidence of record does not convey an understanding of how the [P]etitioner's proposed employment activities stand to have a broader impact on his field." The Director further observed that the record does not "establish[] that [the Petitioner's] proposed work has implications beyond his employer (or any prospective employers), its business partners, alliances, and/or clients and customers at a level sufficient to demonstrate the national importance of his endeavor."

On appeal, paragraphs numbered 10-17 of 17 total paragraphs appear to address the issue of national importance. We note that paragraphs numbered 10-14 consist of language that appears verbatim on page 5 of the brief submitted in response to the Director's RFE. The Petitioner further asserts that he is employed by "one of the world's most influential and innovative companies" and that "the United States is now #1 in Oil & Gas . . . because of the success of great engineers like [the Petitioner" (emphasis omitted). The Petitioner also references the number of citations his research has received. The Petitioner concludes by comparing his citations to those of the petitioner in *Dhanasar*, asserting that "approving [the Petitioner's] case is both legally & morally the right thing to do," and asserting

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

that the Petitioner has satisfied the preponderance of evidence standard in paragraphs 15-17, respectively (emphasis omitted).

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 foreign national 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.

The Petitioner's endeavor of exploration geology benefits his employer and its clients; however, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner's employer and its clients, as contemplated by the first *Dhanasar* prong. *See id.* at 889. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361.

The Petitioner's assertions both in response to the Director's RFE and on appeal suggesting that the Director presented a "notion that only work in the [p]ublic [s]ector or [n]on-[p]rofit [s]ector (such as a [u]niversity) benefits the nation" are not supported by the record. Neither the RFE nor the decision state that only work in the public or non-profit sector may have national importance. Similarly, the Petitioner's assertions both in response to the RFE and on appeal that the Director espoused "a classic example of Leftist Economic Dogma" is not supported by the record (emphasis omitted). Instead, both the RFE and the decision observe that the record does not establish how the endeavor would have substantial positive economic effects broader than benefitting the Petitioner's employer and its clients, referencing language from the *Dhanasar* precedential decision. *See Dhanasar*, 26 I&N Dec. at 889-90.

Additionally, the Petitioner's assertions both in response to the Director's RFE and on appeal regarding his employer's influence and the United States' prominence in the broad field of "oil and gas" do not address how the actual endeavor the Petitioner would pursue—namely, "providing technical and operational knowledge and guidance on seismic interpretations for the large-scale oil and gas projects as well as delivering structural models and providing geological input in the velocity building process, and other related activities"—would have substantial positive economic effects broader than benefitting the Petitioner's employer and its clients. *See id.* Nor does the record establish that any benefit of his work to his employer would rise to the level of national importance. Likewise, although the Petitioner's research citation history relates to the second *Dhanasar* prong, it does not address whether the endeavor would have broader, substantial positive economic effects, as contemplated by the first *Dhanasar* prong. *See id.*

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