U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-R-W-

DATE: JULY 13, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a forensic scientist, 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 Texas 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 argues that she is eligible for a national interest waiver due to her work as a forensic scientist. In May 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. She responded to the RFE and provided additional evidence.

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.

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

[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*).

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.

At the time of filing, the Petitioner was employed as a forensic DNA analyst by [redacted] a full-service crime laboratory. She explained that the lab specializes in forensic DNA analysis for law enforcement agencies, attorneys, and government forensic labs in Florida and around the world. Her duties include conducting preliminary testing, preparing evidence items for analysis, and conducting relevant procedures for the purpose of solving crimes.

In April 2017, we issued an RFE seeking, in part, additional evidence and information regarding the Petitioner's proposed endeavor in the United States. Specifically, we asked the Petitioner to clarify her plans for future work in the field, particularly as it relates to her work as a forensic scientist and/or researcher. In response, the Petitioner offers a personal statement that is dated and signed under penalty of perjury. With respect to the nature of her proposed endeavor, she states, '[redacted] would like to continue my employment as a Forensic DNA analyst at their Forensic Laboratory and if my green card status is approved I plan to continue my employment with them."[4] She also explains that she is not "concentrating on furthering" her prior research because her "practical skills are much more needed in the U.S. as a Forensic DNA Analyst than as a researcher."[5]

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

[3] The record includes evidence that, in August 2011, the Petitioner earned a Master of Science degree in forensic science from [redacted]

[4] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about this prospective position to illustrate the capacity in which she intends to work.

[5] Also in response to our RFE, counsel provides a brief in which she states that the Petitioner intends to "continue her research in association with [redacted] Counsel does not provide details as to how she intends to continue her research or the percentage of her time she intends to devote to such activities and her comments conflict with the personal statement offered by the Petitioner. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. As such, we will evaluate the national importance of the Petitioner's proposed endeavor working as a forensic scientist in a laboratory setting, as she described in her sworn statement.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner maintains that her proposed endeavor of testing and analyzing DNA evidence assists law enforcement officials in solving crimes including homicide and sexual assault, and that her proposed work at benefits law enforcement agencies and government forensic labs throughout the United States. In support of the Petitioner's eligibility, chief forensic officer with in Jamaica, noted that her work performing DNA analysis has assisted government agencies by "solving crimes, providing justice to victims, and exonerating innocent individuals." Accordingly, we find that the Petitioner's proposed work as a forensic scientist has substantial merit.

To evaluate whether the Petitioner's work satisfies the national importance requirement, we requested evidence documenting the "potential prospective impact" of her work. The Petitioner's response has not offered sufficient evidence demonstrating that her proposed endeavor is of national importance. While she contends that her role providing DNA analysis to aids the U.S. interests of solving crime, she has not offered support for the claim that her individual work would have national implications. She also asserts that her endeavor is of national importance because she will not be limited to one geographic area because performs DNA analysis for law enforcement agencies, attorneys, and government forensic labs located in Florida and throughout the United States. However, the geographic diversity of her clientele does not, by itself, establish that her work stands to impact the broader field or otherwise have implications rising to the level of national importance.

Additionally, the Petitioner asserts that her work is of national importance because it aims to reduce a backlog of DNA samples awaiting testing in criminal proceedings. She provides copies of several research reports from the Department of Justice outlining DNA evidence backlogs and discussing initiatives to increase the capacity of public crime labs, but she does not explain how her DNA analysis work stands to eliminate these accumulations. The Petitioner has not offered sufficient evidence to demonstrate that her prospective role as forensic scientist with has implications beyond her laboratory and its clients at a level sufficient to demonstrate the national importance of her endeavor.[6] For example, she does not show that the specific work she proposes to undertake offers original innovations that contribute to advancements in DNA analysis, or otherwise has broader implications in the field of forensic science. As the Petitioner has not established that her endeavor's prospective impact supports a finding of national importance, she has not met the first prong of the *Dhanasar* framework.

[6] 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. Similarly, while the Petitioner emphasizes the national need for DNA sample backlog reduction, she has not demonstrated that her proposed work performing DNA analysis in a private lab necessarily equates to a broader impact on the forensic science field.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. In response to our RFE, she provides evidence of her membership in the and her prior experience analyzing DNA samples for the in Jamaica. She provides a copy of the membership requirements and claims that her selection as a member in this organization reflects a level of expertise that renders her well positioned to advance the proposed endeavor. The requirements state that associate member status, in part, is granted to individuals who have made a significant contribution to the literature of forensic sciences or advanced the cause in some other significant manner. The Petitioner's recognition and acceptance by is reflective of her position as an experienced forensic scientist and DNA analyst.

Regarding her prior experience, the Petitioner indicates that she has worked on a variety of case types ranging from property crimes to sexual assault and murder, analyzing over 5,000 DNA samples over the course of her career. She further maintains that she specializes in using Y-STR analysis for sexual assault cases where the amount of female DNA would normally suppress any potential male DNA in a sample, along with mini-STR analysis used to obtain full profiles on contact DNA including low-level and degraded samples, spent shell casings, bones, and cold cases.

The record contains several reference letters attesting that the Petitioner is a skilled analyst and expert in forensic DNA typing. For example, a professor and director of the forensic science program at writes that the Petitioner has "helped to serve justice by working on hundreds of cases including sexual assault, murder, and robbery." assistant director of the comments that the Petitioner is a "seasoned professional with advanced skills." As such, we find that the Petitioner has provided evidence that she is well positioned to advance her proposed endeavor of conducting DNA analysis and find that she satisfies the second prong of the *Dhanasar* framework.[7]

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 the shortage of qualified forensic scientists able to analyze a growing backlog of DNA samples in jurisdictions throughout Florida and the United States. She notes that recent changes in Florida criminal statutes require expedited processing of DNA samples in sexual assault cases.

[7] The record includes letters of support from colleagues discussing the Petitioner's research in the area of forensic science and DNA analysis. However, we will not evaluate whether the Petitioner is well positioned to conduct such research because, as noted above, she indicates in response to our RFE that she does not intend to further her research activities and aims to focus exclusively on analyzing DNA samples at

However, as the Petitioner has not established that her proposed endeavor is of national importance 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.

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 M-R-W-*, ID# 421383 (AAO July 13, 2017)