U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11133018

Date: JUN. 8, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a healthcare and life sciences management specialist, 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 he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal.[1] The matter is now before us on a motion to reopen. With the motion, the Petitioner submits additional documentation and a statement asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss 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. –

[1] *See* In Re: ID# 7143418 (AAO FEB. 25, 2020).

(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. . . . [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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[2] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[3], 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.[4]

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner stated that his proposed endeavor involves "innovation at the intersection of healthcare, business and technology." He asserted that he intends "to solve problems and create value for stakeholders with the healthcare and life sciences industries, either in an entrepreneurial or an intrapreneurial capacity." The Petitioner further explained that his proposed undertaking includes helping life sciences companies commercialize their inventions and innovations, assisting life sciences companies from around the world in bringing innovative technologies to the U.S. market, transferring technology through working with scientists and life science entrepreneurs to commercialize their ideas and inventions, consulting companies in the healthcare and life science industries, and commercializing scientific discoveries and fostering healthcare innovations.

[2] 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*).
[3] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[4] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

Although the Petitioner evidenced the substantial merit of his proposed endeavor, we determined that the Petitioner did not demonstrate its national importance under the first prong of the *Dhanasar* analytical framework. Specifically, the Petitioner did not show his proposed endeavor stood to sufficiently extend beyond his employer and its clientele and stakeholders to impact his field or the U.S. healthcare industry more broadly at a level commensurate with national importance. Further, the Petitioner did not establish that his proposed endeavor had significant potential to employ U.S. workers or otherwise offered substantial positive economic effects for our nation.

For the reasons discussed below, the Petitioner's motion to reopen does not overcome our prior decision.

A. Judicial Proceeding Statement

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires the motion to be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceedings and, if so, the court, nature, date, and status or result of the proceeding." The Petitioner, however, did not include the required statement. Therefore, the Petitioner's motion does not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

B. Motion to Reopen

Notwithstanding the above, the Petitioner argues that "many innovations can trace their roots to basic research, and much of these researches are conducted with government support just like Dr. Dhanasar's research" and submits an article discussing the commercialization of discoveries in laboratories. In addition, the Petitioner contends that "my goal is to show the importance of work contributed my people like me who work at the later and more critical stage of the innovation process that the industry has rightly named 'the valley of death'" and provides two articles regarding the division between biomedical researchers and the patients who need their discoveries. Further, the Petitioner claims that "[t]he United States' national capacity to fuel growth and improve human well-being through new technologies depends on an ability to pass technologies through a commercialization pipeline" and "[t]his national need for an efficient and effective technology handoff between academia and industry to catalyze impacts has been well documented in many recent studies" and offers two articles pertaining to innovation slowdown and global research and development expenditures.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner's evidence relates to the overall importance of the commercialization and innovation stage from research rather than identifying and establishing the national importance of his specific proposed endeavor. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Petitioner also indicates his current employment at [redacted] Laboratories and states that "I am not wedded to, nor am I held down by one focus area, so I really concentrate on capturing emerging science and driving towards addressing unmet needs that have direct impacts on patients and the healthcare system" and "this creates opportunity to support numerous commercialization and/or product development that would go a long way to change the way patients are being treated as I have done." In addition, the Petitioner claims that "I have engaged in independent work, [and] I supported the work of a leading pharmaceutical company developing drugs to treat late stage metastatic castration resistant prostate cancer" and submits an article relating to the Food and Drug Administration's approval of a therapy designation to [redacted] for treatment of prostate cancer. The Petitioner's past experience and ability to advance his proposed endeavor relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. Although he asserts that "companies and individuals [have] contacted me through various channels (LinkedIn, Email etc.) on the need to have me support their work," the Petitioner did not articulate how his specific endeavor would have broader implications in the field rather than limited to his prospective employers and their projects. 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.

The Petitioner's evidence on motion does not show the national importance of his specific proposed endeavor. Accordingly, we will deny his motion to reopen.

III. CONCLUSION

The Petitioner has not shown that his additional evidence on motion fulfills the first prong of the *Dhanasar* analytical framework. As such, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reopen is dismissed.