U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-A-

DATE: JUNE 14, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an automation and optimization supervisor for business applications and processes, 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 he had not established that a waiver of a job offer, and thus of a labor certification, would be in the national interest. The matter is now before us on appeal.

In March 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, the Petitioner submits additional documentation and contends that he 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* clarifies that, after EB-2 eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (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. If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

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

[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*).

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) 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. 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.

A. Substantial Merit and National Importance of the Proposed Endeavor

At the time of filing, the Petitioner identified his endeavor as global systems, applications, and products (SAP) project management for [redacted] and his job title as "Project Manager for the Cost to Serve (CTS) project for [redacted]." His responsibilities included "the analysis, design, and construction of SAP solutions for CTS though collaborating with the business process manager and IT [information technology] architects to define processes and ensure that the defined requirements are designed, developed, tested, and implemented in accordance with [redacted] global IT standards and corporate vision."

Our RFE asked the Petitioner to provide updated information and evidence regarding his employment and his plans for future work. In response, the Petitioner states that in 2016 he "left [redacted] to join the Testing Enterprise Services Team (TEST) at [redacted]' as an automation and optimization supervisor.[3] He indicates that his current responsibilities include "supervising all efforts to automate and optimize [redacted] business applications and processes, including the development of tests, standards, and best practices to

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

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

support the execution of automation and optimization." The Petitioner submits an April 2017 letter from [redacted] TEST manager at [redacted] stating that he performs "a key role in the organization's endeavor to integrate, build, and test [redacted] global business applications to increase cohesion and automation across all platforms."[4] In addition, Ms. [redacted] contends that although the Petitioner's "title has changed, he continues to deliver the values of global SAP project management, and is in fact even better positioned to contribute to the endeavor as a provider due to his extensive knowledge and insight of [redacted] processes and requirements from a customer perspective." Similarly, the Petitioner maintains that, despite his new job title, "the objective of [his] endeavor is still to improve [redacted] global operations through developing processes that optimize data and enable test automation to ensure software solutions provide sustainable benefits to the operating organizations."

The Petitioner provided studies and online information indicating that effective SAP management drives efficiency, generates cost savings, and improves operational performance. Furthermore, the record includes letters of support from the Petitioner's current and former colleagues attesting to the benefits of SAP project management. For example, [redacted] managing partner at [redacted] a data engineering and business management consultant company, asserted that "research and practice repeatedly show that proper management of SAP can lead to considerable cost savings, reduced risk, and enhanced data insight, while improving service quality, efficiency and compliance." We find that the Petitioner's proposed work as an automation and optimization supervisor, which helps [redacted] identify and execute its enterprise resource planning (ERP) needs, has substantial merit.

To evaluate whether the Petitioner's work satisfies the national importance requirement, we requested evidence documenting the "potential prospective impact" of his work. The Petitioner's response states that "[redacted] is the United States top tax payer and investor, and SAP projects have played a strategic role in [redacted] business success." We note, however, that the Petitioner has not offered sufficient evidence to demonstrate his proposed work at [redacted] has implications beyond the company at a level sufficient to demonstrate the national importance of his endeavor. 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. While the Petitioner emphasizes the size and scope of [redacted] business operations, tax payments, and investments, he has not demonstrated that his particular work for this single company and its SAP projects stands to have a broader impact on the IT field, petroleum industry, or U.S. economy.

Citing a phrase from *Dhanasar*, the Petitioner contends that because his endeavor offers "substantial positive economic effects," it "may well be understood to have national importance." *Id.* at 890.[5]

[4] Specifically, Ms. [redacted] notes that the Petitioner is responsible for creating all test automation, defining the automated/regression testing approach, integrating automation tools with test management tools, testing change management/optimization, supervising staff, providing opportunities to gain expertise with testing tools, and managing a two million dollar project to transform testing practices through automation.

[5] A complete reading of our description of national importance in *Dhanasar* indicates that "we look for broader implications" in considering an endeavor's potential prospective impact, and that "substantial positive economic effects"

While the Petitioner notes that [redacted] paid $27.3 billion in U.S. income taxes and distributed $145 billion to its shareholders, the scope of his employer's business activities alone is not sufficient to demonstrate his proposed endeavor's national importance. Rather, we must examine the prospective impact of the Petitioner's specific endeavor rather than the scale of the company's entire operations. In that regard, Ms. [redacted] asserts that the Petitioner's SAP project offers "potential savings that are expected to be between $2M and $5M per annum." There is no indication, however, that the economic benefits of his proposed work extend beyond [redacted] and its operations at a level sufficient to demonstrate the national importance of his endeavor.

The Petitioner also refers to our recent non-precedent decision concerning a metallurgical engineer whose proposed endeavor was found to have national importance. *Matter of F-E-*, ID# 46885 (AAO Mar. 20, 2017). This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Moreover, our national importance finding in *Matter of F-E-* is significantly discernable from the present matter. For example, the petitioner in the cited matter showed how his "work improves mining processes, advances metallurgical research, and ameliorates critical environmental problems." Specifically, he pointed to his development of a novel method to utilize activated carbon to reduce yield losses during the extraction of gold" and "his identification of the effects of carbon particle size and magnetic activated carbon." Because the petitioner's proposed endeavor involved "developing safer and more productive mining processes" and offered environmental consequences reaching "beyond his employer to affect the mining industry more broadly," we found the record sufficiently established that his proposed endeavor was of national importance.

In the present matter, the record does not sufficiently demonstrate that the Petitioner's software testing and SAP projects stand to impact his industry, field, or the nation's economy more broadly. As the Petitioner has not established that his endeavor's prospective impact 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's qualifications. Our RFE requested the Petitioner to submit documentation showing that he is well positioned to advance his proposed endeavor. In response, he provides the aforementioned letter from Ms. [redacted] discussing his business knowledge, IT expertise, and work on various SAP projects at [redacted] The Petitioner also offers emails showing his participation in "Max Attention Work Stream" meetings. As discussed below, we find that the Petitioner's past experience as a SAP project manager renders him well positioned to advance his proposed endeavor.

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may qualify as such. *Id.* at 889-90.

Several of the letters submitted with the initial filing attest that the Petitioner has played a role in various IT projects for [redacted] For example, [redacted], a process improvement advisor and [redacted] consultant, described the Petitioner's work as data architect for fuels marketing for [redacted] the company's SAP ERP version of business management software used in its downstream business. Mr. [redacted] noted that the Petitioner increased effectiveness of operational and controls reports, led the design and use of a data management issue log, implemented an access database tool, improved customer master data preparation and loading processes, aligned project resources on common dual maintenance plans, and introduced a customer master field tracker.

In addition, [redacted] a global strategy program manager with [redacted] indicated that the Petitioner worked as the Cost to Serve (CTS) SAP project manager for [redacted] Mr. [redacted] stated that the Petitioner was charged with delivering "strategic SAP enhancements in response to business requirements" and that his responsibilities involved "the analysis, design, and construction of SAP solutions for the project." Furthermore, Mr. [redacted] noted that the Petitioner leveraged "in-depth knowledge of [redacted] proprietary IT practices and expertise of the company's SAP project methodologies to reach significance milestones in the project."

The evidence discussed above is sufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor of SAP project management for [redacted] including supervising efforts to automate and optimize the company's business applications and processes. Accordingly, he has established that he satisfies the second prong of the *Dhanasar* framework.

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

The Petitioner asserts that he "possesses a rare combination of business, technical, and cultural intelligence" and that it would be impractical for him to obtain a labor certification. For instance, Ms. [redacted] contends that because of "the institution-specific requirements of his role, it would be impractical for [redacted] to go through the labor certification process, especially since [the Petitioner's] unique experience and insight make him significantly more impactful in this critical position that benefits the company . . . ."[6] The Petitioner maintains that "[r]equiring his employer to test the U.S. labor market would deprive [redacted] and hence the United States, of the full extent of the benefits of SAP projects."

While some of the Petitioner's knowledge and experience may exceed the minimum requirements for his occupation and therefore could not be easily articulated on an application for labor certification, he has not demonstrated, as claimed, that he presents benefits to the United States through his proposed endeavor that outweigh those inherent in the labor certification process. The Petitioner has not shown an urgent national interest in proposed work, nor has he demonstrated that he offers contributions of such value that, over all, they would benefit the nation even if other qualified U.S. workers were

[6] The labor certification process is designed to certify that a foreign worker will not displace nor adversely affect the wages and working conditions of U.S. workers who are similarly employed. Job requirements must adhere to what is customarily required for the occupation in the United States and may not be tailored to the foreign worker's qualifications or unduly restrictive, unless adequately documented as arising from business necessity.

available. In sum, the Petitioner has not demonstrated 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 Petitioner therefore has not established that he meets the third prong of the *Dhanasar* framework.

IV. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he 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 V-A-*, ID# 353734 (AAO June 14, 2017)