U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-F-M-

DATE: MAR. 23, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a mathematics teacher, 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 the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. In December 2016, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*.

In support of his appeal, the Petitioner submits additional documentation and asserts that he is eligible for a national interest waiver because he has "satisfied the three prongs under the new 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 Petitioner received a bachelor of science degree in mathematics from [redacted] and a master of arts degree from [redacted] The record includes a U.S. educational equivalency evaluation stating that the Petitioner holds the foreign equivalent of U.S. masters of arts in education with an emphasis in mathematics.[3] Accordingly, the Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree. 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

At the time of filing, the Petitioner was a mathematics teacher at [redacted] in the [redacted] system. The Petitioner has consistently stated that he intends to continue his work as a high school teacher serving primarily minority students in science, technology, engineering, and math ("STEM") disciplines. The Petitioner contends that his work is of substantial merit and national importance due to his "effectiveness in raising math proficiency of my mostly minority and underprivileged students and my critical role in implementing the concerted and multi-pronged efforts by the Federal and State Governments to improve upon the educational reforms." He describes how he intends to continue using "pioneering techniques and research" regarding STEM education to "prepare minority students" to "participate in professional national STEM educational and economic opportunities in their future." The Petitioner further explains how

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

[3] On appeal, the Petitioner submits evidence that he additionally earned a masters of arts in curriculum and instruction with an emphasis in mathematics from [redacted] after filing the petition.

his work seeks to promote "the national competitiveness of the U.S. in the long term with specific focus on minority children," and he asserts that "maintaining a citizenry that is well versed in STEM fields is a key portion of the public education agenda of the United States."

In the RFE, we asked the Petitioner to provide evidence documenting the potential prospective impact of his proposed endeavor. In response, the Petitioner maintains that his work teaching STEM to high school students aims to impact the broader field of STEM education. He writes that "the STEM educational system in the US is in crisis mode and in dire need of rebuilding including, as essential, educators with knowledge and ability to implement STEM education." He references several articles and research reports that discuss the need for STEM education in the United States. For example, the Petitioner provides an article entitled ' an article entitled " an executive summary of the 2013 a study entitled " and written materials from the 2016 The Petitioner also summarized newspaper articles and government studies highlighting the need for new and innovative STEM teaching methods in high school classrooms. We find that the Petitioner's proposed work implementing STEM techniques in a high school classroom has substantial merit as it provides valuable educational benefits to his students.

However, the Petitioner has not offered sufficient evidence demonstrating that his proposed endeavor is of national importance. The Petitioner indicates that his "STEM teaching can remedy the American STEM education crisis and has national influence." The Petitioner points to a letter from his colleague, who confirms that he is a member of the of which is designed to prepare low-income, first-generation students for college admission. The Petitioner claims that his proposed work implementing the program with his students affects the field of STEM education nationally. He writes that is "well known nationally for its role in closing the achievement gap for all students, including those who are underrepresented in college, and it provides educators with proven, real world strategies to accelerate the achievement of these students." The Petitioner contends that his use of techniques with his students stands to improve their graduation rates and admittance to college, making it "a successful solution" to the "crisis" of educating youth in STEM disciplines, and thereby "providing a national benefit."

While we acknowledge the Petitioner's proposed use of unique methods and initiatives to encourage his own students' academic progress, the evidence does not demonstrate that this work offers benefits that extend beyond his school or district to impact the field of STEM education more broadly. While the program itself may aim to impact the field of STEM education, the

Petitioner has not shown that his implementation of the program at his specific school offers such an impact.[4] Accordingly, the Petitioner has not met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The Petitioner submitted academic records, letters confirming his employment history, evidence of his credentials and certifications as a teacher, and various awards and certificates, including numerous certificates of participation, completion, and attendance for training courses and seminars relating to his professional development. In addition, the Petitioner provided letters of recommendation from former colleagues, supervisors, students, and parents of students, attesting to his teaching expertise and positive impact on student performance. The references discussed the Petitioner's talent, dedication, and contributions to his schools. For example, the Petitioner provided a letter of support from a teacher at stating: "[The Petitioner] has become a 'gentle giant,' in our Mathematics Department. His easy manner and his approach to teaching cause his students to continuously seek him out for help with math related problems." also discusses the Petitioner's role as an enrichment teacher and his skill in teaching disadvantaged youth. In addition, former Principal of describes how she and the Petitioner attended a professional development training seminar with

The record additionally includes several letters from colleagues attesting to the Petitioner's work with and STEM teaching techniques that specifically benefit underprivileged students. For example, guidance chairperson, states that the Petitioner "takes initiative as well as being a responsible person who is able to successfully develop plans and implement them." Similarly, math department chair, indicates that "[The Petitioner] developed and implemented effective styles of instructional delivery tailored to relate mathematics and technology to the day-to-day lifestyles of his students."

We note that the record reflects the Petitioner's qualifications as an experienced teacher, his dedication to STEM teaching principles, the actions he has taken to prepare his disadvantaged students, his attendance at training seminars and certificates related to and the praise offered by former students. As such, we find that the Petitioner has provided evidence that he is well positioned to advance his proposed endeavor of teaching STEM disciplines to high school students and find that he satisfies the second prong of the *Dhanasar* framework.

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

Third and finally, we conclude that on balance, the Petitioner has not established that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. The labor certification process is designed to certify that the foreign worker will not

[4] 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. *See Dhanasar*, 26 I&N Dec. at 893.

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.

The Petitioner maintains that granting the waiver would serve the national interest because his presence would help to ameliorate a shortage of STEM educators. We note, however, that the U.S. Department of Labor addresses worker shortages through the labor certification process and the Petitioner has not demonstrated that obtaining a labor certification would be impractical.[5] The record does not include sufficient evidence to establish that the Petitioner presents a significant benefit to the United States through his proposed endeavor, that his prospective work would serve an urgent national interest, or that he offers contributions of such value 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.

III. 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 R-F-M-*, ID# 12602 (AAO Mar. 23, 2017)

[5] The Petitioner maintains that the labor certification process is impractical for his current employer. He provides evidence that was temporarily debarred from filing immigration petitions under section 212(n)(2)(C)(i) of the Act as a result of its violation of U.S. Department of Labor regulations. However, the debarment period concluded prior to the date this petition was filed, and the record does not include any evidence that remains similarly constrained. Additionally, even if remained precluded from filing a labor certification based on its violations of applicable regulations, this would not demonstrate that, on balance, it would be beneficial to the United States to waive the requirement of a labor certification.