U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-O-

DATE: MAY 5, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a minister who works in community development and outreach, seeks second preference immigrant classification as an individual of exceptional ability under 8 C.F.R. § 204.5(k)(2), 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 as an individual of exceptional ability, 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.

On appeal, the Petitioner submits additional documentation and argues that he is eligible for a national interest waiver because his work, in which he proposes to start a bee farming program, will "boost the economy of the USA and serve as an additive to other contributors in Community development." In February 2017, we issued a request for evidence (RFE) asking the Petitioner to provide further evidence establishing his qualifications as an individual of exceptional ability and satisfying the three-part framework set forth in *Dhanasar*. He did not respond to our RFE.

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 –
> >
> > > (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.

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[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*).

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) 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

A. Appeal Abandoned

We may summarily dismiss an appeal if the Petitioner does not respond to our RFE. The regulation provides, in pertinent part:

> If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

8 C.F.R. § 103.2(b)(13)(i). As stated previously, we issued an RFE asking for further evidence to establish the Petitioner's qualifications as an individual of exceptional ability and to demonstrate his eligibility for a national interest waiver under the three-part framework set forth in *Dhanasar*. Our RFE specifically informed the Petitioner that "[w]e may dismiss your appeal if we do not receive your response to this RFE **within 48 days of the date on the cover letter**. This time period includes 3 days added for service by mail." (Emphasis in original.) To date, more than 48 days have lapsed, and we have yet to receive a response from the Petitioner on issues we discussed in the RFE. As such, we will summarily dismiss the appeal as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

In the alternative, as discussed below, we find that the Petitioner has not demonstrated that he qualifies for classification as an individual of exceptional ability or that he meets the eligibility requirements for a national interest waiver as set forth in *Dhanasar*.

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

B. Exceptional Ability

The Petitioner indicates that he works in community development and outreach and that he intends to set up a bee farm in [redacted] that "will assist in empowering the economic stance of the community," and "add value for employment especially among the youths of this community." He writes that the project will "assist in training those interested in bee-keeping to actualize their dreams."

As noted above, the Director found that the Petitioner qualifies for classification as an individual of exceptional ability in the arts, sciences, or business. However, in our RFE, we noted several insufficiencies in the evidence relating to this classification. Therefore, we provided the Petitioner with an opportunity to establish that his proposed work relates to the sciences, arts, or business, and to demonstrate that the documentation submitted under the relevant criteria reflects a degree of expertise above that ordinarily encountered among ministers or community developers and outreach workers. As the Petitioner did not respond to the RFE, we will make a determination based upon the record as it stands.

The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii) reads:

> To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:
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> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
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> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
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> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
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> (E) Evidence of membership in professional associations; or
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> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If a petitioner submits the requisite evidence, we then go on to consider whether the record demonstrates "a degree of expertise significantly above that ordinarily encountered." 8 C.F.R.

§ 204.5(k)(2); *cf. Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a similar two-part framework relating to individuals of "extraordinary ability" where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination).

Here, the Director found that the Petitioner met the evidentiary criterion of possession of a license to practice the profession or certification for a particular profession or occupation at 8 C.F.R. § 204.5(k)(3)(ii)(C) based upon his certificates of ordination from [redacted] located in [redacted] Texas; Assemblies of God Church, located in Nigeria; and, [redacted] located in New Jersey. The Director also determined that the Petitioner's membership in [redacted] meets the criterion for membership in professional associations under 8 C.F.R. § 204.5(k)(3)(ii)(E). Finally, the Director found that the Petitioner established his recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F). The Director concluded that the testimonial letters, awards, and honorary degrees support a finding that the Petitioner has been recognized for achievements and significant contributions by his peers. Accordingly, the Director found that the Petitioner met at least three of the ten criteria listed at 8 C.F.R. § 204.5(k)(3)(ii).

The Director then found that the totality of the evidence established the Petitioner has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. However, we find that this determination is not supported by the record. Specifically, as the Petitioner did not respond to our request to explain how his anticipated work in community development, ministry, and outreach relates to the sciences, arts, or business, we cannot conclude that the Petitioner meets the requirements of this classification. We also disagree with the Director's conclusion that the evidence submitted demonstrates that the Petitioner possesses a degree of expertise that is significantly above that ordinarily encountered in community development, ministry, or outreach, as explained below.

The Petitioner documented his membership in professional associations [redacted] and he has established that he is an ordained minister with a license to practice Christian ministry. Nevertheless, the Petitioner has not shown that his licenses or memberships demonstrate "a degree of expertise significantly above that ordinarily encountered" among ministers or community developers. The Petitioner also submitted evidence that he has been recognized for achievements and significant contributions by his peers. We note that the record contains awards and donations that indicate that churches and religious organizations have supported the Petitioner's outreach work and donated resources in support. However, the Petitioner has not shown that this support reflects expertise that is significantly above that of other religious community development/outreach workers.

The Petitioner provided copies of several recommendation letters from individuals who have worked with him in various capacities. The letters contain general praise for the Petitioner's skill and dedication, but they do not distinguish him from other community developers to show how he has a degree of expertise significantly above that ordinarily encountered in community development and

outreach. For example, [redacted] writes that the Petitioner has been involved in developing new churches throughout Nigeria. He also states that the Petitioner has added much value to missions movements in several nations. [redacted] explains that the Petitioner has carried out work in Nigeria that has "transformed lives and communities," such as "building homes for the homeless."

[redacted] comments on the work that the Petitioner has done as a pastor with various congregations throughout Nigeria and how he has "broken bounds [*sic*], done many exploits, and spent a very long time as a leader of a church." [redacted] New York comments that the Petitioner "worked among the homeless in [redacted] where he would gather, feed, and teach and encourage them with the good news of hope." He further states: "In [redacted] he built a community center for the community. In [redacted] in [redacted] he set up housing structures for the residents." While these statements indicate that the Petitioner was performing valuable work, without additional evidence, the record does not support a finding that his accomplishments are indicative of expertise significantly above that encountered in community development, ministry, or outreach. As such, the AAO finds that the Petitioner has not satisfactorily shown that he qualifies as an individual of exceptional ability under section 203(b)(2) of the Act. The Director's determination on this issue is, therefore, withdrawn.

C. National Interest Waiver

Even if the Petitioner demonstrated that he qualifies as an individual of exceptional ability, he has not provided sufficient evidence that he is eligible for a national interest waiver. The Petitioner stated that he would be working in the field of community development and described his role as "correcting the mindset of the hopeless, less privileged to see life in a positive direction" through "ministry, outreach, and Christian education." Specifically, he explained that he intends to set up a bee farm in [redacted] that "will assist in empowering the economic stance of the community," and "add value for employment especially among the youths of this community," and that this endeavor will "assist in training those interested in bee-keeping to actualize their dreams." As noted above, because *Dhanasar* was issued before we adjudicated the petition, we issued an RFE to obtain additional information and evidence regarding the Petitioner's eligibility under the new framework. *See* 8 C.F.R. § 103.2(b)(8) (requests for evidence). Again, the Petitioner did not respond to the RFE addressing the *Dhanasar* framework and thus we will make a determination based upon the current record.

The record as it stands does not sufficiently establish that the proposed endeavor has substantial merit and national importance under *Dhanasar*'s first prong. The Petitioner made general statements regarding the potential impact of his proposed endeavor. For instance, he stated that it will "make more productive use of natural resources," "improve education," "improve wages and working conditions of US," "[benefit] the American economy because jobs will be created," and "serve the interest of the following US government agencies: United States department of Health and Human Services, Department of Agriculture, Department of Labor, US department of Home Land Security." He further stated that "America can become the highest producer of [redacted] in the world." The Petitioner also described how he intends to use [redacted] Texas, as the "pest-setting ground," and

then expand to other states, and that the bee-keeping farm in will empower the "economic stance" of the United States, particularly at-risk youth.

However, the record does not contain sufficient evidence supporting the above assertions. While the Petitioner broadly contends that his endeavor will have substantial positive economic effects for the nation, the record lacks information about specific nature of the proposed endeavor such as projected staffing levels, the number of youth he aims to impact, and the quantity and types of any intended products. Furthermore, the record does not include documentation or explanations supporting the Petitioner's statements that his work will "make more productive use of natural resources," and serve the interest of government agencies. Without additional information and evidence, the Petitioner has not established the implications of his proposed endeavor and its potential prospective impact on the United States.

With respect to the second prong of the *Dhanasar* analysis, the Petitioner has not supplied adequate evidence documenting the specific ways in which his experience renders him well positioned to advance the field of community development. He states that he has "spent 37 years in humanitarian services via community transformation programs in Nigeria and outside Nigeria," and that he has an "established/registered Non-governmental organization (' under which he carried out his bee farming and aid initiatives in Nigeria and other countries. The record also includes copies of the formation documents for two charitable organizations: and However, he has not provided evidence regarding his record of success in these projects to demonstrate that they render him well positioned to advance the proposed endeavor.

In addition, the Petitioner submitted various reference letters discussing his work as a pastor in Nigeria, but these letters do not include specific information describing the projects he led, their outcomes, or their impact on the communities noted. He has also failed to provide evidence demonstrating a history of success in any endeavors similar to the one he proposes to undertake, showing the interest of relevant parties in the proposal, documenting how he will secure funding, or otherwise establishing that he is well positioned to start the bee farming program he has proposed.

Finally, the Petitioner has not rendered evidence explaining why a labor certification would be impractical in his case; whether the United States would benefit from his contributions even if other U.S. workers are also available; or whether urgency warrants foregoing the labor certification process, such that we can determine that, on balance, a waiver of the labor certification is warranted.

In summary, the evidence of record does not include sufficient information and evidence regarding the proposed endeavor to establish that the Petitioner's work will have both substantial merit and national importance. He has not sufficiently described his intended project or documented his past achievements to show that he is well positioned to advance the proposed endeavor. Finally, the Petitioner has not established 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. 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.

III. CONCLUSION

As the Petitioner did not respond to our RFE asking for further evidence to establish his qualifications as an individual of exceptional ability and to demonstrate his eligibility for a national interest waiver, we consider the appeal to be abandoned. Additionally, we further find that the Petitioner has not satisfactorily shown that he qualifies as an individual of exceptional ability under section 203(b)(2) of the Act, and has not established that he is eligible for a national interest waiver under the three-part framework outlined in *Dhanasar*.

ORDER: The appeal is dismissed.

Cite as *Matter of D-O-*, ID# 76247 (AAO May 5, 2017)