U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-M-S-

DATE: MAY 16, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a high school 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 a 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 did not qualify for classification as a member of the professions holding an advanced degree, and that she had not established that a waiver of a job offer, and thus of a 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 reconsider. With the motion, the Petitioner submits a brief and contends that she is eligible for a national interest waiver. 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*. The Petitioner did not respond to our request.

Upon review, we will deny the motion.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] *See Matter of C-M-S-*, ID# 18274 (AAO Sept. 20, 2016).

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. –
>
> > (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 recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.[2] *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

[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*).

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 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.[3]

II. ANALYSIS

The record reflects that the Petitioner holds the foreign equivalent of a U.S. baccalaureate degree in education and has progressive post-baccalaureate experience in that specialty equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, in our appellate decision, we found that the Petitioner qualified as a member of the professions holding an advanced degree, and withdrew the Director's determination on that issue. The sole issue to be considered on motion 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. Motion Abandoned

We may deny a motion 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.

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

8 C.F.R. § 103.2(b)(13)(i). Our RFE specifically informed the Petitioner that we may deny her motion "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 deny the motion as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

B. Eligibility for a National Interest Waiver

In the alternative, for the reasons discussed below, we find that the Petitioner has not established eligibility for a national interest waiver.

1. Motion to Reconsider

The Petitioner filed the current motion to reconsider prior to the publication of *Dhanasar*, stating that our appellate decision under the *NYSDOT* framework was erroneous. While she contends that USCIS "should set a more appropriate, reasonable and fitting threshold in adjudicating National Interest Waiver Petitions by educators teachers," she does not specifically identify any findings or statements of fact in our appellate decision that were in error. The Petitioner's assertion that the *NYSDOT* framework is "best directed to applications filed by engineers rather than educators/teachers" is not indicative that our findings constituted an error of law or policy. The *NYSDOT* guidelines required the Petitioner to establish that the benefits of her work are national in scope and that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications, and she has not done so in this matter. *See NYSDOT*, 22 I&N Dec. at 217-18. With regard to following the guidelines set forth in *NYSDOT*, USCIS, by law, does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c).

The Petitioner's arguments on motion do not establish that our previous findings were based on an incorrect application of the *NYSDOT* framework, law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was incorrect based on the evidence before us at the time of the decision. Furthermore, as discussed below, the record does not show that the Petitioner meets the eligibility requirements under the *Dhanasar* framework.

2. *Dhanasar* Framework

Finally, we find that the Petitioner has not demonstrated that she satisfies the requirements set forth in *Dhanasar*. At the time of filing the Form I-140, the Petitioner had been employed as a mathematics teacher at Jr. High School, since August 2006. Previously, she taught high school mathematics in New York for two years and the Philippines for 28 years. She stated that her professional action plan and objective are:

> To have a safe and rigorous classroom which is conducive to learning and relevant for all scholars to prepare them with a college ready perspective, motivate scholars to be

> mindful of global competitiveness, create their own way of self-sustaining livelihood and even go beyond to discover new techniques to contribute to the national advancement of the country in terms of technology, engineering[,] science and of course mathematics.

With respect to the national importance of the Petitioner's proposed endeavor, our RFE asked for evidence documenting the "potential prospective impact" of her work. As the Petitioner did not respond to our request, she has not demonstrated that she is eligible for a national interest waiver. Specifically, the record does not show that her classroom instruction would impact the field of education or mathematics more broadly, as opposed to being limited to the students at the school where she teaches. Accordingly, without sufficient documentation of their broader impact, her teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework.[4] Furthermore, without additional information and evidence, the Petitioner has not established that she is well positioned to advance her proposed endeavor and 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.

III. CONCLUSION

As the Petitioner did not respond to our RFE seeking evidence to establish eligibility, the motion is considered abandoned. In addition, the Petitioner has not demonstrated that our previous decision was in error. Finally, as she has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that the Petitioner has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reconsider is denied.

Cite as *Matter of C-M-S-*, ID# 304770 (AAO May 16, 2017)

[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. *Id.* at 893.