U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-M-C-G-

DATE: NOV. 2, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a physics 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 she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal of that decision and also denied her subsequent motion to reopen.[1] The matter is now before us on a second motion to reopen.

On motion, the Petitioner submits additional documentation and asserts that she is eligible for a national interest waiver. In July 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, she provides further evidence and contends she has "satisfied the three prongs under the new framework."

Upon *de novo* review, we will deny the motion.

[1] *Matter of L-M-C-G-* ID# 29257 (AAO Oct. 17, 2016) was our most recent decision in this matter.

I. LAW

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).

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.[2] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

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 Petitioner received a master's of arts in education degree from Philippines. The record includes a U.S. educational equivalency evaluation stating that the Petitioner holds the foreign equivalent of a U.S. master of science degree with an emphasis in science education. Accordingly, the Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, and we agreed with this determination. The sole issue in contention on motion 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 employed by the She indicates that she worked for in Kentucky, beginning in 2008 and continuing through June 2014, after having previously taught in the Philippines since 1985. The Petitioner has consistently stated that she intends to continue her work as a high school physics teacher serving students in science, technology, engineering, and math ("STEM") disciplines.

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

In the RFE, we asked the Petitioner to provide evidence documenting the potential prospective impact of her proposed endeavor. In response, the Petitioner maintains that her work teaching physics to high school students aims to impact the broader field of STEM education. She references several articles and research reports that discuss the shortage of qualified physics teachers in the United States. For example, the Petitioner provides an *American Physics Society* article entitled "Highly Trained STEM teachers Needed to Boost America's Global Competitiveness, Accordingly to New Study;" 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 her students.

The Petitioner's evidence, however, is not sufficient to demonstrate that her proposed endeavor is of national importance. The Petitioner avers that her proposed endeavor is of national importance because "the United States has a severe, long-term shortage of qualified physics teachers" and "the need for qualified physics teachers is greater now than at any previous time in history." The Petitioner further explains how her work seeks to promote "education as a national imperative," and she asserts that "education creates an economy built to last." However, while she has provided evidence documenting her work at the local level, she has not offered evidence that her work renders benefits that extend beyond her school or district to impact the field of STEM education more broadly.[4] As the Petitioner has not established that her specific endeavor's prospective impact supports a finding of national importance, she 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 her employment history, evidence of her credentials and certifications as a teacher, and various awards and certificates, including several for participation, completion, and attendance for training courses and seminars relating to her professional development. In addition, the Petitioner provided letters of recommendation from former colleagues, supervisors, students, and their parents, attesting to her teaching expertise and positive impact on student performance. The references discussed the Petitioner's talent, dedication, and contributions to her schools. For example, a letter of support from director of program effectiveness at stated that she provided "international perspectives to a project-based learning environment," and that her "instructional strategies and "ability to integrate traditional methodology in chemistry, physics, and space science" distinguished her as an instructor.

Overall, the record demonstrates the Petitioner's qualifications as an experienced teacher, including her nomination as the most influential student mentor at and her role as initiator and coordinator for an international humanitarian project at her school to send supplies to impoverished parts of the world. In addition to letters of support discussing the Petitioner's progress in the classroom, the record contains her favorable teacher performance evaluations, and awards and

[4] 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.

certificates reflecting that her students have garnered local recognition for their academic accomplishments. Accordingly, the Petitioner has provided evidence that she is well positioned to advance her proposed endeavor of increasing her students' STEM achievement, and we find therefore that she satisfies the second prong of the *Dhanasar* framework.[5]

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

As explained above, 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. Here, the Petitioner claims that she is eligible for a waiver due to her teaching qualifications, favorable recommendations, and the impracticality of obtaining a labor certification. However, as the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

On motion, the Petitioner has not offered new facts demonstrating her eligibility for the benefit sought. As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reopen is denied.

Cite as *Matter of L-M-C-G-*, ID# 505907 (AAO Nov. 2, 2017)

[5] While we find that the Petitioner is well positioned to support STEM students in her classroom, the evidence is not sufficient to demonstrate that her past work has affected the education field beyond the schools where she has taught, or that she has otherwise been integral to advancing novel STEM learning techniques that have garnered significant interest in her field. Therefore, had the Petitioner met the first prong by demonstrating that her proposed work has broader implications in the field (such as by influencing STEM education practices beyond her school districts), the record does not show that she is well positioned to advance such an endeavor.