U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22816001

Date: DEC. 8, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, 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).

The Director of the Nebraska Service Center initially approved the petition. However, the Director subsequently revoked the approval, concluding 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 these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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.[3]

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.*

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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*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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

II. ANALYSIS

The record reflects that the Petitioner qualifies as a member of the professions holding an advanced degree. The next 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. In revoking the approval of the petition, the Director decided that the Petitioner did not demonstrate eligibility for any of the three prongs under the *Dhanasar* analytical framework.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

In his initial cover letter, the Petitioner claimed that he was seeking employment "as an independent business consultant and owner in the field of commercial transportation of goods and products in the US." He highlighted the importance of the trucking industry, noting that it "is vital to the health of the US economy," and that "all truckers contribute to the health and strength of the economy as a whole."

In the notice of intent to revoke (NOIR), the Director informed the Petitioner that while the record demonstrated that his proposed endeavor had substantial merit, he did offer sufficient evidence relating the proposed endeavor's national importance. Specifically, the Director noted that the Petitioner's supporting statement spoke in broad terms regarding his intent to work in the field of commercial transportation, which appeared to highlight the benefits to the Petitioner on a personal level as opposed to the prospective national or global implications his endeavor would have within the commercial transportation field. The Director acknowledged the Petitioner's submission of a copy of his commercial driver's license and a copy of the articles of incorporation for [redacted] but noted that the record was devoid of evidence documenting the potential prospective impact of his proposed endeavor.

In response, the Petitioner claimed that upon approval, he intended to operate his transportation company, [redacted] which he claimed provides long-distance freight trucking and logistics planning throughout the United States. The Petitioner claimed that his experience working at a customs checkpoint, as well as his extensive training in enterprise management, "will lead the company in providing transport of [truckload] (TL) freight and less-than-truckload freight (LTL) to shippers and suppliers across the United States." The Petitioner further indicated that he would use his experience in transport management to help small and medium-sized enterprises in the U.S. improve operation and achieve better productivity and profitability levels, therefore generating revenue within the country and creating employment opportunities.

In support of these assertions, the Petitioner submitted a document entitled "NIW Business Plan." The business plan stated that [redacted] will hire 11 employees by the end of its fifth year of operations, and included the following personal statement from the Petitioner:

> The formative experience of my own company may positively impact the entire industry and set standards for other businesses. It will alleviate the ongoing problem

of drivers being cheated out of their actual wages and positively impact the entire logistics and trucking industry as drivers will be safer and more productive.

The Petitioner also submitted an expert opinion letter from [redacted], Professor and Coordinator of Project and Supply Chain Management at [redacted] University, as well as an industry report and article discussing the demand for freight transportation in the United States and the impact of the COVID-19 pandemic on supply chains.

In revoking the petition's approval, the Director determined that the Petitioner had not demonstrated the potential prospective impact of his proposed endeavor, noting that the Petitioner failed to show the wider economic effects of the endeavor. Specifically, the Director determined that the Petitioner did not submit sufficient evidence to show the potential economic impact of the endeavor on the U.S. economy or establish that the proposed endeavor had significant potential to employ U.S. workers. The Director also determined that the Petitioner did not show that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact the U.S. economy or commercial freight transportation industry more broadly at a level commensurate with national importance. On appeal, the Petitioner submits a virtually verbatim copy of its response to the NOIR, stating that the decision to revoke the petition's approval was in error and that he is eligible for a national interest waiver.[4]

Upon review, we concur with the Director's determination that the Petitioner did not demonstrate the national importance of his endeavor. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company to impact the commercial trucking and long-distance commercial freight trucking industries more broadly at a level commensurate with national importance. As the Director observed, the Petitioner's proposed endeavor, which entails working as the president of a freight transportation company he founded, benefits the company he founded, its clients, and its customers. However, the record does not establish how the Petitioner and his company's operations will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Dhanasar*, 26 I&N Dec. at 889-90. For example, the Petitioner's business plan does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. Further, the record does not establish with specific data or documentation how its operations, among all freight transportation operations, rises to the level of having national or global implications. *See id*. Additionally, the general industry report and article submitted do not refer to the Petitioner, the company he founded, or the specific endeavor he proposes to undertake; therefore, they do not establish how the proposed endeavor rises to the level of national importance. *See id*.

[4] We also observe that the Petitioner's response to the NOIR and appeal brief both assert that "given his vast experience, he possesses the skills to train and provide marketing insights for the Brazilian companies that plan to conduct business in the United States, as well as for U.S. companies looking to expand their business into the Latin American market." The Petitioner, however, is a citizen of Kazakhstan and does not appear to have any business experience or relationships with companies Brazil or Latin America. Moreover, he does not claim that his proposed endeavor includes "providing marketing insights for Brazilian companies" elsewhere in the record. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id*.

The Director declined to afford evidentiary weight to [redacted] letter, noting that the letter did not provide [redacted] contact information and provided only conclusory statements regarding the Petitioner's reputation and abilities. [redacted] recited the Petitioner's education and employment history, and provided a summary of the Petitioner's business plan. Based on this information, [redacted] concluded that the Petitioner was capable of advancing the proposed endeavor and stated that the Petitioner's business plan projections, which indicate prospective income in excess of $3.5 million by the fifth year of operations, demonstrate the substantial positive economic effects necessary to meet the first *Dhanasar* prong.

Upon review, we agree with the Director's determination that the letter provides an overly vague recitation of the Petitioner's reputation and abilities, and does not provide a basis for his conclusory assertions regarding the national importance of the Petitioner's proposed endeavor. While he commented generally on the growth potential of the freight transportation industry, he did not support his conclusions regarding the national importance of the Petitioner's proposed endeavor, and repeats much of the information the Petitioner already provided in his résumé without adding sufficient independent analysis. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor and why it would have national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his investment plans and company's future staffing levels stand to provide substantial economic benefits in New York or the United States. While the Petitioner asserts that [redacted] will hire 11 employees by the end of its fifth year of operations, he has not offered sufficient evidence that the area where the company operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Dhanasar,* 26 I&N Dec. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

For these reasons, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrate his eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.