U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19611580

Date: FEB. 9, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks 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 Texas Service Center denied the petition, concluding 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. On appeal, the Petitioner submits evidence and a brief asserting he is eligible for a national interest waiver. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion,[1] 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.

The first prong, regarding 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 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]

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[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding the equivalent of an advanced degree. The remaining 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.[3]

For the reasons discussed below, we conclude that the Petitioner has submitted insufficient and inconsistent evidence regarding the substantive nature of his proposed endeavor. In the initial filing, the Petitioner asserted in his "professional plan & statement" that he will "continue [his] career as a general operations manager, to advise U.S. companies on how to properly plan, direct, and coordinate the operations of their businesses." He stated that he "will ensure the success of any company that employs me," and described the attributes of his endeavor, as follows:

> General Operations Managers plan, direct, or coordinate the operations of private sector organizations. Duties and responsibilities include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one functional area of management or administration, such as personnel, purchasing, or administrative services.

This description is taken, verbatim, from the general job description for general and operations managers on O*NET, an employment information database sponsored by the U.S. Department of Labor.[4] The Petitioner provided articles and reports about the nature of the work performed by general operations managers which generally describe the occupation but provide no specific details about the Petitioner's proposed endeavor.

He also asserted he will "contribute significantly to general operations management as it pertains to the Brazilian business environment and rubber products market," but the Petitioner initially proposed no specific endeavor relating to his plans; instead, he put forth general assertions that an employer seeking to do business in Brazil could benefit from his knowledge of that country. He stated:

> My [endeavor will] help U.S. businesses seize new market and investment opportunities [which] will potentially impact the U.S. in the following ways:
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> - Facilitating cross-border projects between the U.S., Brazil, and Latin America;
> - Designing, implementing, and managing all activities in large-scale projects;
> - Enhance the business facets of U.S. companies;
> - Providing project leadership, people management, and business development; and,
> - Generate tax revenue.

The Petitioner did not sufficiently elaborate on these claims. For example, regarding enhancing the business facets of U.S. companies, the Petitioner did not detail how his proposed endeavor will

[3] While we may not discuss every document submitted, we have reviewed and considered each one.
[4] *See* https://web.archive.org/web/20181230165056/https://www.onetonline.org/link/summary/11-1021.00.

enhance the business facets of U.S. companies, nor did he sufficient explain how his endeavor will produce such effects at nationally significant levels. He emphasized that he created a business in Brazil in 2000; "a company that distributes hoses, straps, adhesives, glues, and safety equipment for industrial maintenance" noting "I bring 24 years of experience in the field of general operations." Importantly, the Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

The Director issued a request for evidence (RFE), asking for more information and evidence to establish the national importance of the proposed endeavor. In response, the Petitioner submitted a revised "professional plan & statement." Parts of this statement repeat the earlier version, but he added that he recently founded a company, V-, and through this company he will provide "import, export, distribution and services." He also mentioned that he is a managing partner of D-, a used car seller, and the record establishes that he has partial ownership. In the new statement he omitted mention of seeking direct employment with U.S. companies. Instead, he stated that he will be an entrepreneur and general manager of operations of his own company. He also discussed the importance of supply chain management.

The record shows that the Petitioner did not form V- until after he filed the petition. His initial description of the proposed endeavor did not include any plans to form such a company. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. § 103.2(b)(1).

Further, the evidence submitted in the RFE response provided conflicting information about the Petitioner's endeavor. Specifically, he stated in the RFE that he will offer "consulting services to improve supply chain operations (import, export, distribution, and logistics) through which he will provide valuable support in areas of critical need and national importance." He submitted a copy of O*NET's 2019 summary report for the "supply chain managers" occupation, which indicates that in this occupation managers typically:

> Direct or coordinate production, purchasing, warehousing, distribution, or financial forecasting services or activities to limit costs and improve accuracy, customer service, or safety. Examine existing procedures or opportunities for streamlining activities to meet production distribution needs. Direct the movement, storage, or processing of inventory.

The Petitioner's focus on his entrepreneurial provision of supply chain management services presented in the RFE substantively differs from his initial plan to provide services to U.S. employers as a general operations manager. We therefore conclude the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see* also *Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). We conclude the Petitioner's establishment of a new company and his revised plan to focus his endeavor on his business and supply chain management consulting presented after the filing date cannot retroactively establish eligibility. A petitioner may not make material changes to a petition

that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

On appeal, the Petitioner asserts that his revised business plan submitted in the RFE response describes "in-depth, his specific plans in the nation, including the national importance of his work." While the Petitioner indicates that the U.S. hose industry will benefit from the creation and expansion of his business, he has not shown the national importance of V-'s prospective business operations in the United States. For instance, he does not adequately explain through his revised plan how his endeavor is of national importance, rather than a means to primarily benefit himself through his business or its clients. The five-year "start-up" plan for V- in the RFE response indicates that V- will first focus on the export of U.S. manufactured goods to Brazil. V- will also establish operations to support and facilitate the importation of Brazilian-made rubber and plastic products through the Petitioner's businesses located in Brazil, as follows:

> [V-] will initially target American companies in Florida's home state to commercialize the [I- and E-] brand products for import and distribution to the final consumer (Companies) to create a minimal relationship with the brand and gain traction for the products with the companies from Florida. Later on, distributors of [I- and E-] products [in Georgia in year 3 and the Carolinas in year 5] will be developed.

Importantly, the business plan does not sufficiently explain how V- plans to partner with other companies to export goods to Brazil, or the specific U.S. manufactured goods to be exported. Likewise, the plan does not adequately identify the markets V- will target to establish distribution networks for the importation of Brazilian products, or whether it will differentiate itself from established competitors in the U.S. market through offering significant innovations to the industry. The business plan asserts that V- will generate revenues exceeding $800,000 in 2021, which will steadily climb each year to reach revenues of over $6,000,000 in 2026, and as a result will have created at least 37 jobs in that timeframe. However, the plan does not sufficiently detail the basis for these financial and staffing projections, or adequately explain how these projections will be realized. Here, the Petitioner has not demonstrated that his business will impact the nation at a level commensurate with national importance.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In his appeal brief, the Petitioner asserts that his proposed endeavor with its focus on entrepreneurship and supply chain management stands to "generate a broad[] impact on the field, especially as he will support the small businesses ecosystem, and the overall U.S. economy." To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide supply chain management services and promote international trade through his Florida-based company, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company to impact his field or related industries more broadly at a level commensurate with 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 company's future staffing levels would provide substantial economic benefits in Florida or the United States. While the Petitioner asserts that V- will hire 37 U.S. employees within five years, 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 projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. *See Dhanasar*, 26 I&N Dec. at 889-90. Because the Petitioner has not provided consistent information regarding his proposed endeavor, we cannot conclude that he meets either the first or second prong, or that he has established eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose. It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *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 and second prongs of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.