U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21105865

Date: JUNE 16, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a postsecondary education administrator, 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 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 the Petitioner 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 a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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. . . . the 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).[1] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, 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.

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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. 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 noncitizen's qualifications or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together,

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

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

The Director found that the Petitioner qualifies as a member of the professions holding 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 of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan "to continue working in the United States as a [p]ostsecondary [e]ducation [a]dministrator." She asserted that [redacted] a company she founded, purchased an unspecified level of interest in [redacted] a limited liability company, which is owned by [redacted] a holding company, which in turn also owns [redacted] an English-as-a-second-language learning facility. The Petitioner also asserted that, through her company, she "will keep working with [redacted] directing and coordinating the activities of learning institutions to meet and adapt to the growing demands in the United States' educational service industry, thus advancing the Trump administration's efforts to encourage a more open education market." The Petitioner further asserted that she will "help to generate U.S. tax revenue and create American jobs by investing to expand" [redacted]

In response to the Director's request for evidence (RFE), the Petitioner submitted a document titled, "Business Plan: EB-2 NIW Supporting Documentation," dated May 2021, after the petition filing date in April 2020.[3] The business plan asserts, in relevant part, that "[the Petitioner's] clients will benefit through increased productivity, efficiency, and higher profits, which will reflect positively on the overall U.S. economy," and that "[b]y the end of Year 5, the [c]ompany will have a total of 14 employees, thereby stimulating the U.S. economy by creating new jobs and increasing the amount of payroll taxes paid." The business plan further asserts, "The total indirect jobs to be generated in the same period would reach 29, according to the multipliers provided by the [Economic Policy Institute]."

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that the proposed endeavor "has the potential to benefit the prospective school or institution of higher learning that she may work and provide benefits to the students whom she may serve. However, the totality of evidence does not establish the national importance of the [P]etitioner's proposed endeavor." The Director also noted that, despite submitting "a business plan with projections of 14 employees by the end of year 5, and payroll expenses totaling $766,394 at that time, [the Petitioner] has not shown that these projections represents substantial economic effects as contemplated by *Dhanasar*." The Director further concluded that "the evidence is insufficient to

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

[3] A petitioner must establish eligibility at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). A petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm'r 1971).

establish that the [P]etitioner's proposed endeavor otherwise stands to have broader implications rising to the level of having national importance."

On appeal, the Petitioner discusses her qualifications and prior career accomplishments. She also references "[i]ndustry [r]eports and [a]rticles, which discuss the important role that education administrators play in the heart and foundation of America's future—a solid education and a well-prepared workforce." She further asserts that the proposed endeavor "impacts nationally important matters, and the national economy, specifically" by:

- Offering effective administration and operations support to education institutions, especially as they recover from the COVID-19 pandemic;
- Promoting cross-border understanding between U.S.-based schools and their Latin American prospective students, thus driving national economic advantage by way of tuition; and
- Stimulating the domestic job market, as her company will lead to the generation of new jobs for American workers.

We note that neither the initial endeavor submitted in support of the petition, nor the RFE response business plan, address "[p]romoting cross-border understanding between U.S.-based schools and their Latin American prospective students." Therefore, that statement on appeal presents a new set of facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45. Accordingly, we need not address that assertion further.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The record does not establish that the Petitioner would work as a postsecondary education administrator, as asserted on the petition. Specifically, the record does not establish that [redacted] the [redacted] or any other company mentioned by the Petitioner is a postsecondary education facility. On the contrary, the business plan submitted in response to the RFE describes [redacted] as "a Florida-based company that specializes in offering consultancy services to educational institutions in the U.S.," not a postsecondary education institution. Further, the record does not establish how the Petitioner, working as an administrator of [redacted] would be responsible for the activities of [redacted] and its subsidiaries, including the [redacted]

To the extent that the Petitioner would be responsible for those activities, it would appear that the proposed endeavor may benefit [redacted], its subsidiaries, and its students. The proposed endeavor may also benefit [redacted] and the unspecified clients referenced

in the business plan. However, the record does not establish how the endeavor will rise to the level of having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Although the Petitioner asserted in response to the RFE that her own company will directly employ 14 workers and generate 29 indirect jobs within five years, the record does not establish that employing those 14 workers and generating 29 indirect jobs would have substantial positive economic effects, and even if it did, the Petitioner does not specify the workers' workplaces and establish whether the workplaces are in an economically depressed area. *See id.* We note that the business plan indicates that [redacted] is based in [redacted], Florida, but that it "will target clients located in Tennessee and Ohio" after first "expand[ing] its market outreach and collaborat[ing] with clients located in Kentucky." However, it does not specify where the 14 workers' and 29 indirect jobs' workplaces would be, and whether those job creations would have substantial positive economic effects in the context of those workplaces.

The Petitioner's discussion of her qualifications and prior career accomplishments relate to the second *Dhanasar* prong, whether she is well-positioned to advance the proposed endeavor, not the first *Dhanasar* prong, whether the proposed endeavor has both substantial merit and national importance. *See id.* at 888-90. In turn, the Petitioner's discussion of the role of academic administrators in general and her discussion of education trends in general do not address the "specific endeavor that the foreign national proposes to undertake" and how it may have national importance. *See Dhanasar*, 26 I&N Dec. at 889.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.