U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19808418

Date: MAY 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, 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 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.

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. –
>
> (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. . . . 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 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, 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)

[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*).

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]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found that the proposed endeavor has substantial merit, the Director concluded that the record does not establish that the Petitioner's endeavor has national importance. The Director also concluded the record did not satisfy the second and third *Dhanasar* prongs. 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 proposed endeavor as a plan "to continue using my expertise and knowledge in the field of [e]ntrepreneurship, with particular expertise in the areas of [b]usiness [m]anagement, [f]ranchise[m]anagement, [i]nvestments, [r]eal [e]state [d]evelopment, [n]egotiations, [h]uman [r]esource [m]anagement, [l]eadership, [s]trategic [m]anagement, and [e]ntrepreneurship." Although the Petitioner did not initially elaborate on any particular aspect of the proposed endeavor, he also asserted it would accomplish the following:

- Designing, implementing, and managing all activities in the commercial, strategic planning, business, and financial areas of a business;
- Leading innovations and advancements within several sectors of industry;
- Investing in real estate endeavors;
- Attracting [f]oreign-[d]irect [i]nvestments;
- Investing in different endeavors in multiple industries;
- Continue job creation, which will continue to increase the national GDP;
- Networking with industry peers, competitors and prospective clients to continuously develop new business opportunities; and
- Generate U.S. tax revenue.

In response to the Director's request for evidence (RFE), the Petitioner specified that he would operate several businesses, including a "main holding company [that] manages joint real estate investments to improve the access to more affordable houses and enhance the housing conditions in the United States."

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that "the evidence of record does not convey an understanding of how the [P]etitioner's proposed employment activities stand to have a broader impact on his field." More specifically, the Director concluded that the "[P]etitioner has not established that his proposed endeavor has implications beyond his prospective employer (or self-owned company), his business partners, alliances, and/or clients/customers, co-workers or workplace at a level sufficient to demonstrate the national importance of his endeavor." The Director also concluded that "the [P]etitioner 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."

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

On appeal, the Petitioner asserts that the proposed endeavor "will result in national and local implications for real estate, the housing market, direct foreign investments, and the construction industry." The Petitioner also asserts that he "is already making an impact in the United States through his business conglomerate, with plans to continue expanding and growing his business, and thereby impacting both the Florida economy and the national economy, which is nationally important." The Petitioner further asserts that the proposed endeavor "will extend beyond his company and clients to impact the real estate and construction sector more broadly."

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 Petitioner submits several documents in support of his assertions on appeal; however, they are dated after the petition filing date in December 2018. The Petitioner submits a business plan, titled "EB2 Supporting Documentation," dated "April 2022." The Petitioner also submits bank statements dated 2021 and 2022, and corporate tax returns for calendar year 2021. The Petitioner submits various articles providing generalized information, such as an article published by a website called The Balance, titled "Real Estate's Impact on the US Economy," an article published by the Information Technology & Innovation Foundation, titled "Attracting Foreign Direct Investments Through Augmented and Virtual Reality," and an article published by a website called Medium, titled "Economy 101: Real Estate Sector—the Property Provider of the Economy." The articles either bear dates after the petition filing date, or they bear no date of publication but discuss public events that occurred after the petition filing date. The Petitioner also references an invitation to become a member of the Advisory Council of Countrywide Capital Group, LLC. The Petitioner describes the council as "a principal buyer and private real estate investment firm specializing in the acquisition, stabilization, and disposition of distressed (Scratch & Dent) and Non-Performing mortgage loans and REO properties in Florida, the Western US, and nationally." The copy of the advisory council invitation letter submitted on appeal is dated April 1, 2022, and it addresses activities to be performed at some unspecified time in the future.

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 the Petitioner or Beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Because the Petitioner's business plan submitted on appeal is dated "April 2022," after the petition filing date, it may not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. The bank statements and tax returns dated after the petition filing date also may not establish eligibility. *See id.* Likewise, the articles submitted on appeal may not establish eligibility because they are dated after the petition filing date, or they bear no date of publication but discuss public events that occurred after the petition filing date. *See id.* In turn, the advisory council invitation letter cannot establish eligibility because it is dated after the petition filing date. *See id.*

Even if the business plan submitted on appeal could establish eligibility, which it cannot, it would not provide sufficient information to determine whether the proposed endeavor would have significant potential to employ U.S. workers. For example, the business plan summarizes nine construction projects, two of which were remodeling single-family homes and seven of which were new constructions of single-family homes. The business plan indicates the date of sale for each of the projects; however, it does not indicate the project dates to establish whether the projects occurred sequentially or simultaneously. Although the business plan indicates 48 "jobs created" for each of the remodeling projects and 184 "jobs created" for each of the new construction projects, it does not identify any of the employees whose jobs were "created" and what the jobs entailed. Specifically, the business plan does not establish whether the same 48 employees who worked on the 2019 remodeling project also worked on the eight other projects throughout 2020 and 2021. Accordingly, even if the business plan could establish eligibility, which it cannot, it would not provide sufficient information to establish whether the proposed endeavor would have significant potential to employ U.S. workers or otherwise cause substantial positive economic effects. *See Dhanasar*, 26 I&N Dec. at 889-90.

Next, even if the articles submitted on appeal could establish eligibility, which they cannot, they do not address the Petitioner, his proposed endeavor, and how the specific endeavor will have substantial positive economic effects that rise to the level of national importance. *See id.* In turn, even if the advisory council invitation letter could establish eligibility, which it cannot, it does not establish what the Petitioner would do after "join[ing the writer's] advisory council," and how those activities would have substantial positive economic effects that rise to the level of national importance. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore he 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.