U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22643053

Date: NOV. 04, 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 application manager, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, 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 a 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 petition, concluding that the evidence did not establish the national importance of the proposed endeavor, that the Petitioner is well positioned to advance it, or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts his eligibility, arguing that the Director erred in the decision. 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. LEGAL FRAMEWORK

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.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

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). 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). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted 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. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Petitioner provided evidence to establish that he earned a U.S. master's degree. Therefore, we conclude that he qualifies for the underlying EB-2 classification as an advanced degree professional. The remaining issue to be discussed is whether the Petitioner qualifies for a national interest waiver. While we may not discuss each piece of evidence individually, we have reviewed and considered each one.

In his initial filing, the Petitioner provided explanations of his past and current work but little information about a specific proposed endeavor. At the time of filing, the Petitioner claimed to work at the [redacted] where he "transformed the business environment from an exclusive setting to a collaborative team space," resulting in increased capacity and efficiency for [redacted] He stated that he implemented and managed agency-wide software applications, including productivity systems, databases, Intranet, Extranet, and Learning Management platforms, such as video streaming, as well as supported the business processes and objectives within those systems. From the documents provided in the initial filing, we surmise that the Petitioner proposes to continue working as an applications manager. His proposed endeavor involves boosting productivity and capital through technological adaptation. As an example of the importance of the information technology (IT) field, he noted IT's role in the healthcare industry. He explained that the use of electronic health records improves the quality and efficiency of healthcare but also provides real-time access to patient information. The Petitioner further highlighted that the United States has a shortage of IT workers, and that the IT field is essential for nonprofit success.

The Director issued the Petitioner a request for evidence (RFE), which informed him that, among other deficiencies, the evidence was insufficient to establish the national importance of the proposed endeavor. While acknowledging the shortage of IT workers, the Director explained that the Petitioner had not provided sufficient evidence to support a finding that the proposed endeavor would remedy the shortage. In addition, the Director discussed a sampling of the Petitioner's letters of recommendation, noting the authors' claims that the Petitioner improved the [redacted] donor database and that he is a skilled technologist who can benefit a variety of entities and the economy as a whole. Nevertheless, the Director informed the Petitioner that the evidence did not establish that the proposed

endeavor would impact the IT field, or the United States as a whole, but rather appeared to impact his employer only. The RFE further noted that the Petitioner had not established how the proposed endeavor would have a substantial positive economic effect or a significant potential to employ U.S. workers.

In his RFE response, the Petitioner provided numerous articles and reports emphasizing the shortage of IT workers, the importance and need for IT workers, as well as the increasingly critical need for enhanced cybersecurity. Further, the Petitioner emphasized his experience, education, and personal qualities, and explained how they have enabled him to provide valuable IT services to organizations with important missions, such as [redacted] He also provided evidence that in February 2021, he began working for an IT company called [redacted]

The Director denied the petition, explaining that the evidence did not demonstrate that the proposed endeavor would have a substantial positive economic effect or a significant potential to employ U.S. workers. The Director concluded that the Petitioner had not explained how his work at [redacted] would be nationally important. Moreover, the Director explained that without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record did not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. See id. at 890. We agree.

Although we recognize that the Petitioner proposes to offer valuable services in the IT field, this does not necessarily establish the national importance of the proposed endeavor. In determining national importance, the relevant question is not the importance of the 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 id. at 889. We agree that the field in which the Petitioner proposes to work is indeed important; however, this is insufficient in itself to establish the national importance of the proposed endeavor.

While the Petitioner's experience, academics, and personal qualities are commendable, they do not bear upon the national importance of the proposed endeavor. The Petitioner's personal and professional qualifications relate more 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 the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. Therefore, evidence that the Petitioner is highly qualified to provide the proposed endeavor services is insufficient to meet the Petitioner's burden of demonstrating the national importance of the proposed endeavor under the first prong.

After the initial filing, the Petitioner submitted additional letters of recommendation, such as ones from [redacted] Assistant Professor at the [redacted] [redacted] a principal consultant at a technology company; [redacted] the head of ICT at [redacted] and [redacted] a principal IT consultant. We reviewed the additional letters of recommendation, including those initially submitted and updated, as well as those submitted in the RFE response and on appeal. The authors described the Petitioner's work in his master's degree program, praised his technical acumen and IT skills, as well as remarked upon the results the Petitioner achieved on various projects and the importance of those projects.

Even if the evidence supported a finding that the Petitioner achieved the results the authors described, this would still be insufficient to establish the national importance of the proposed endeavor because it would not establish how these results extended beyond the Petitioner's specific projects and employers. In other words, the evidence does not establish that the results the Petitioner produced had a broader impact beyond his individual employer(s). To illustrate, the Petitioner has not provided evidence to suggest that his academic work contributed to the IT field in any way, nor has he suggested that his IT services at [ ] have impacted the IT field as a whole. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. See 1756, Inc. v. U.S. *Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Here, the authors emphasized the importance of the IT field in general, rather than explaining how the specific proposed endeavor will have an impact rising to the level of national importance.

We acknowledge the Petitioner's argument that through his services, the organizations he works for can be more productive in providing services to others and that the benefits of a productive, well-functioning business extend beyond the individual organization. Here, the Petitioner relies upon basic economic principles to suggest that increased productivity benefits everyone. However, he does not offer a sufficiently direct connection between impacts that rise to the level of national importance, such as a positive shift in the economy or significant job creation, and his proposed endeavor services. To illustrate with an example, although the Petitioner may claim that his proposed endeavor will create jobs, the record does not indicate how many jobs the Petitioner's IT services will generate, which jobs, where they would be located, how much they would pay, or how long the positions would be needed. It is insufficient to claim increased revenue and services, improved economy, or significant job creation without providing evidence to support such claims.

On appeal, the Petitioner continues to rely upon his qualifications and the importance of the IT field to support a finding that the proposed endeavor has national importance. Although the Petitioner argues that merely working in an important field or for an important organization is sufficient to satisfy his burden, we disagree with this conclusion. As the Director stated, the evidence suggests the Petitioner's proposed endeavor will benefit his employer, but it does not sufficiently demonstrate any projected U.S. economic impact or job creation attributable to his future work. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). The Petitioner has not met that burden.

III. CONCLUSION

The documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar would serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. 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).

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.