U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22568211

Date: OCT. 6, 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 intellectual property (IP) specialist, 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 denied the petition, concluding 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 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.
>
> (B) Waiver of job offer –
>
> > (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 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)

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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).

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.[3]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the issue to be determined on appeal 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 eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

> [IP] law [as] well as art law are very important for the economic growth and technological progress. The U.S. Chamber of Commerce supports the development of the [IP] law. I made a lot of research about the national and international application of rules and methods, which can protect the [IP] and rights of authors and other actors of the art market. My research achievements are beneficial for the whole U.S. nation and satisfy national goals given by government agencies.

In response to the Director's request for evidence, the Petitioner stated:

> Through implementation my system of the IP audit, I can help US companies and individuals successfully protect, develop, and reinforce their IP assets, identifying IP development current needs, opportunities, and risk.
>
> This system can be applied in many areas, but it provides the greatest advantage for tech, biotech and pharmaceutical domains, and the sphere of Arts. IP audit can be applicable for large companies and small businesses.
>
> My endeavor to permit companies and individuals protect and develop their IP presents an advantage for many areas, such as business, culture, education, and economic development.

In addition, the Petitioner submitted a business plan reflecting:

> [The Petitioner] plans to provide IP audits and IP management analyses as an IP Specialist in the U.S. . . . [The Petitioner] plans to contribute to IP development and protection by using her specialized IP knowledge. Over the next ten years, [the Petitioner] plans to set up her own company and will specialize in providing IP-related service to biotech, tech, and art companies.

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

> Using her knowledge and experience gained in Russia and France, [the Petitioner] has developed her own system of IP audit, which has been successfully implemented abroad. Namely, [the Petitioner] plans to implement this IP auditing system through her endeavor in the U.S.
>
> An IP audit is a systematic of the IP owned, used, or acquired by a company, necessary to evaluate and manage risk, remedy problems, and implement best practices in IP asset management. An IP audit is an indispensable tool for successfully managing, creating, or revising a company's IP strategy. Thorough IP audits help companies assess and protect their IP as well as identify IP development needs, opportunities, and risks.

On appeal, the Petitioner maintains that her "endeavor helps US businesses and individuals to develop, protect and monetize their IP" and "[i]t is necessary to stress that IP of the whole country is the IP of its individuals and business." The Director determined that the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance aspect of her 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 Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of her providing specific IP services rather than the national importance of IP or the wide range of business fields or industries in which she intends to work. 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.

Furthermore, although she describes herself as "a valuable and well-known professional in the sphere of IP protection," the Petitioner's experience, skills, and abilities in her 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 she proposes to undertake has national importance under *Dhanasar*'s first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. While she contends that the "development and protection of IP is a key factor of the development and growth of the US economy, culture and security," she has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of her specific proposed endeavor rises to the level of national importance. Instead, the record contains evidence relating to general IP material, such as IP principles for advancing cures and therapies, Presidential proclamations, trade policies, and IP enforcement. 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, the record does not show that the Petitioner's proposed endeavor of providing IP audits and IP management

analyses as an IP Specialist stands to sufficiently extend beyond her potential or futuristic employers or clients, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the business plan does not make any employment or revenue projections from her anticipated company or how her business would impact the economy. The Petitioner has not established that her company would employ a significant population of workers in the area or that her endeavor would offer the region or its population a substantial economic benefit through such employment levels or business activity.[4] As such, the Petitioner has not demonstrated that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects." *Dhanasar*, 26 I&N Dec. at 890.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[5]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[4] We note that the Petitioner contends that the Director erred in stating that "according to her business plan the petitioner plans to set up her own company over the next ten years." Specifically, the Petitioner asserts that "nothing in my business plan states that I[']m planning to set up my company in 10 years, I[']m planning to set up my company right after the approval of my petition." However, as indicated above, page 10 of her business plan reflects that "[o]ver the next years, [the Petitioner] plans to set up her own company."

[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).