U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23671552

Date: JAN. 9, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, a mechatronics engineer, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

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. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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. *See* section 203(b) of the Act. 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. *See id.*

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

[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*).

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, 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 as a [m]echatronics [e]ngineer with multi-national companies in the U.S., providing indispensable guidance regarding cross-border transactions involving the development of different projects in Brazil." The Petitioner also asserted that he "will bring optimal results to any company that chooses to hire me in the future." The Petitioner further asserted that his endeavor will contribute the following:

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

- Increase U.S. GDP;
- Create jobs for Americans;
- Generate tax revenue for the U.S.;
- Facilitate cross-border transactions between Brazilian and U.S. manufacturing companies;
- Navigate Brazil's business environment; and
- Lead cross-functional groups in large and highly complex mechatronics engineering projects.

In response to the Director's request for evidence (RFE), the Petitioner altered his proposed endeavor. He first reiterated that his "proposed endeavor in the United States will be to continue developing projects in my current position"; however, he added that he intends to "create a service company in the area of [a]utomation and [i]ndustrial [m]aintenance to support local companies expand their operations, and assist them with supporting installations, comissioning's [*sic*], maintenance, customer support, among many other services." Specifically, the Petitioner asserted that he "intend[s] to open a business in partnership with [redacted] which will be the main investor of the company." The Petitioner's new business "will support [redacted] with installations, commissioning, maintenance/periodic maintenance, customer support, and the development of prospective customers."

The Petitioner also asserted in response to the RFE that he has "begun taking steps to open a company [that] will provide fully customizable solutions complying with requirements established by the provisions of the pharmaceutical sector regarding the production of packaging machines for face masks, surgical masks, N95 masks, surgery gloves, surgery masks, syringes, gauzes, test tubes, ampoules, dialysis kits, [and] probes." The Petitioner submitted a business plan dated March 2021 for the automated packaging company in response to the RFE.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Because the Petitioner's business plan is dated after the 2019 petition filing date and because the Petitioner's initial proposed endeavor did not include opening such a company, the business plan and the Petitioner's assertions regarding that company present a new set of facts that do not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249; *Matter of Izummi*, 22 I&N Dec. at 176. Similarly, because the Petitioner's initial proposed endeavor did not include creating a service company to support local companies expand their operations, that aspect of the proposed endeavor in response to the RFE also presents a new set of facts that do not establish eligibility. *See id.* Because those aspects of the proposed endeavor do not establish eligibility, we need not address them further.

The Director acknowledged that the Petitioner submitted a description of his proposed endeavor, letters of recommendation, and articles about the proposed endeavor's industry. However, the

Director observed that the letters do not establish how his prior work "extend beyond the scope of his employer and associated end-clients" and that the articles "do not establish that working as a [m]echatronics [e]ngineer for a multi-national company has national [importance]." The Director further observed that, although the Petitioner mentioned "cross-border transactions involving the development of different projects in Brazil" in the initial description of the proposed endeavor, the record does not "provide details of those projects or their potential impact on the field of endeavor," as the Director had requested in the RFE. Based on those deficiencies, the Director concluded that the record did not establish that the proposed endeavor has national importance.

On appeal, the Petitioner asserts that the Director disregarded the business plan submitted in response to the RFE and "[e]vidence of the Petitioner's work in the field, which demonstrates his vast contributions in the business field" in addition to the letters of recommendation and articles about the proposed endeavor's industry. The Petitioner also generally reasserts:

> Petitioner's proposed endeavor is national in scope, as his professional activities relate to a matter of national importance and impact, particularly because they generate substantial ripple effects upon key commercial and business activities on behalf of the United States—namely, serving the IT and business functions of U.S. companies. His proposed endeavor is a vital aspect of U.S. companies' operations and IT industry—which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy.

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 [noncitizen] 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.

First, the Petitioner's assertions on appeal regarding the business plan submitted in response to the Director's RFE are misplaced. As addressed above, because the Petitioner's business plan is dated after the 2019 petition filing date and because the Petitioner's initial proposed endeavor did not include opening such a company, the business plan and the Petitioner's assertions regarding that company present a new set of facts that do not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249; *Matter of Izummi*, 22 I&N Dec. at 176.

Next, although the Petitioner asserts on appeal that the Director disregarded "[e]vidence of the Petitioner's work in the field," the Petitioner does not specify any particular item of evidence in the record that the Director overlooked. Moreover, the Petitioner does not elaborate on how that evidence establishes that the proposed endeavor has "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or has broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90. Instead, general information regarding an individual's prior work experience is

appropriately discussed under an analysis of the second *Dhanasar* prong—whether the individual is well positioned to advance the proposed endeavor. *See id.* at 888-91.

Although the Petitioner also asserts on appeal that the Director disregarded letters of recommendation and articles about the proposed endeavor's industry in the record, as noted above, the Director specifically explained why the letters and articles do not establish how the proposed endeavor has national importance. The Petitioner does not provide information on appeal about how the Director erred in the analysis of the letters and articles. As noted above, 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 [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Because the letters of recommendation and generalized articles about the industry do not address how the proposed endeavor extends beyond the scope of the Petitioner's employer and how the proposed endeavor may have broader implications, they do not establish that the proposed endeavor has national importance. *See id.* at 889-90.

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