U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19993001

Date: MAR. 1, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a dentist, 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.
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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.

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:

> My career plan in the United States is to work with American dental clinics that require my specialized knowledge, years of experience, and significant expertise. Throughout my career as a Dentist, I have gained intimate knowledge of the Argentinian dental industry and have in-depth knowledge of dentistry, endodontics, prosthetic dentistry, implant placement, oral surgery, aesthetic dentistry, dental consulting, oral health, writing and editing, personnel management, and leadership. By applying my skills in U.S. dental facilities, I will be able to contribute to the high-growth American healthcare industry and even be able to offer instructional advice to aspiring dental professionals. I also intend to continue implementing ingenious strategies while maintaining positive relationships with my professional colleagues and identifying any business opportunities through extensive research. This is indicative of the future benefits I will bring to the dental industry and the overall healthcare sector in the U.S.
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> My ultimate goal is to open a private practice in an area with shortage of dentists; thereby, improving the dental health in the community. Also, I will provide direct and indirect work to people related to the dental office, such as secretaries, assistants, associate dentists, and specialists that will work as a part of the dental team. My ability to work part time as a Faculty Member at an institution of higher learning will allow me to train future dentists and show them how to deal with complex dental cases . . . .

In response to the Director's notice of intent to deny, the Petitioner submitted a business plan reflecting:

> Upon completing his course of study at the University [redacted] [the Petitioner] plans to open a practice in the area . . ., which will primarily serve low-income residents, especially those who speak Spanish, as there are few practices in the area that can help Spanish-speaking patients who have limited English proficiency. In this way, [the Petitioner's] services will improve the dentistry industry's quality service for patients across the nation, while also helping mitigate the nation's shortage of dentists.

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

On appeal, the Petitioner maintains that his proposed endeavor "is to open a dental clinic in an underserved area designated as a high-score Dental Health HPSA [Health Professional Shortage Area], drawing directly on his specialization in Urgent Care and Maxillo-Dental Prosthesis" and "will directly address a local shortage of dental care and have positive economic benefits." 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 his proposed endeavor.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. In *Dhanasar*, we 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.

With respect to the Petitioner's proposed care and treatment of patients, the record does not demonstrate that it offers broader implications to support a finding of national importance. The record reflects that the Petitioner provided evidence relating to oral health in the United States. In determining national importance, however, 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. Furthermore, the record contains documentation relating to oral health in New York and Medicaid, poverty, unemployment, and other demographic information for the [redacted] New York area. While the Petitioner's business plan claims that his endeavor "will potentially impact the U.S.," such as "[a]id in the diagnosis and treatment of patients' teeth, gums, and related parts of the mouth," "consult and dealt with complex oral health cases," and "[e]ducate people on how to prevent oral diseases, as well as provide instruction on taking care of the teeth and gums, in addition to suggesting lifestyle choices that affect oral health," this does not establish that his dental office would impact the dental field or oral health industry more broadly, as opposed to being limited to the patients he serves.

Moreover, 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. Without sufficient documentary evidence of its broader impact, the Petitioner's private practice as a dentist does not meet the "national importance" element of the first prong of the *Dhanasar* framework. Even ventures and undertakings that have as their focus one geographic area of the United States may properly be considered to have national importance. *Id.* at 889. In the case here, however, the Petitioner did not show how operating a clinic in an underserved area would have a broader impact in the field.

Similarly, the Petitioner contends that he "demonstrated a nationally recognized need for dentists in [redacted] NY," "the U.S. government has assigned the city of [redacted] a Dental Health HPSA score of 21, and a HPSA FTE Shortage score of 25.57," and "[t]his demonstrates a nationally recognized need for more than 25 full-time dentists in [redacted]. While the evidence might relate to the substantial merit of his proposed endeavor, the shortage of dentists and other health care professionals in the [redacted] New York area or the United States does not render his potential employment

nationally important under the *Dhanasar* framework. In fact, such shortage of qualified workers is directly addressed by the U.S. Department of Labor through the labor certification process. Again, the Petitioner did not establish how working as a dentist in [redacted] New York would have broader implications to the dental field.

Furthermore, the Petitioner asserts that his business plan shows that his clinic will "hire five U.S. workers aside from the dentist, accounting for $520,000 in wages by its fifth year of operations." The Petitioner, however, has not shown that his proposed dental clinic's future staffing levels stand to provide substantial economic benefits to the [redacted] New York area or the United States. Although the business plan claims that the clinic will employ a total of six individuals in an economically depressed area, the Petitioner has not established that the clinic would employ a significant population of workers in the area or that his endeavor would offer the region or its population a substantial economic benefit through such employment levels or business activity. Further, while the business plan indicates projected revenue of $1.4 million by year five, 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 his 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 his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he 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] *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).