U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30354419

Date: APR. 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nutritionist, seeks employment-based second preference (EB-2) 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 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 EB-2 classification, but that she 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 pursuant to 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. Section 203(b)(2)(B)(i) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar,* 26 I&N Dec. 884 (AAO 2016), provides the framework

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

A. EB-2 Classification

The Director's request for evidence (RFE) states "the petitioner has established she is an alien of exceptional ability . . .." The Petitioner provided a U.S. educational equivalency evaluation that determined her Brazilian degree is equivalent to a U.S. bachelor's degree in nutrition. In addition, she provided several letters of reference from former employers attesting to her over five years of work experience as a nutritionist. As such, we will withdraw the Director's finding that she is an individual of exceptional ability, and instead conclude she established her eligibility for EB-2 classification as an advanced degree professional, as defined by 8 C.F.R. § 204.5(k)(2).

As such, the only remaining issue is whether the Petitioner's endeavor meets the *Dhanasar* framework for a discretionary national interest waiver.

B. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Id.* at 889. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

Dhanasar's first prong focuses on the specific endeavor that the foreign national proposes to undertake and its "potential prospective impact." *Id.* at 889. As such, we will first identify the Petitioner's

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

The Petitioner's proposed endeavor is a nutritional consulting company called [redacted] that will specialize in "complex nutritional consulting" with the mission to "create a healthier population, reduce the incidence of diet-related diseases and promote sustainable practices that benefit both the individual and the wider community." She describes the services she will provide as: detailed nutritional assessments; development of personalized menus; government program planning; cost management; monitoring and evaluation; qualification and training; menu review audit; documentation and compliance; policy development; research and scientific studies; and strategic partnerships.[3] As such, we agree with the Director's conclusion that the proposed endeavor has substantial merit.

Because the endeavor has substantial merit, we turn to whether the proposed endeavor is of national importance, as contemplated by *Dhanasar*.

On appeal, the Petitioner asserts that her RFE response "emphatically underscores the pivotal national implications of [her] endeavor," and that her company will lead to "transformative changes with expansive national and global implications in the health sector," and positively impact the U.S. economy, as well as "significantly enhance social welfare without detriment to American workers" by improving health outcomes. She also asserts that her endeavor is aligned with government initiatives to address hunger and eliminate nutrition-related diseases and health disparities.

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 specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. 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, such as those resulting from certain improved manufacturing processes or medical advances." *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. Here, the Petitioner must demonstrate the national importance of her company's services rather than the national importance of the field of nutrition.

The Petitioner's RFE response explains that her endeavor would contribute to healthier diets and the United States would save $70.9 billion in medical costs. She also asserts her endeavor will have a substantial positive economic effect in economically depressed areas by promoting local entrepreneurship, wellness and gastronomic tourism, partnerships with local producers, and qualification and training of local professionals.[4] On appeal, the Petitioner emphasizes that her endeavor is a

[3] The offered services are explained in more detail in the Petitioner's response to the Director's request for additional evidence (RFE). However, for brevity, we will not explain each service, but have reviewed and have taken the full scope of each service into account for purposes of our decision.

[4] The Petitioner's RFE response includes a more detailed description of each of these claimed impacts, however for purposes of brevity, we will not describe each one in this decision, but have reviewed and considered each one carefully in our decision.

"transformative methodology with the potential for scalable, national impact." She asserts that her endeavor includes nutrition consulting and will also "serv[e] as a beacon for nutritional excellence and a catalyst for healthier, more informed dietary choices across the United States." She maintains that her aim is to create ripple effects in the nutrition field through her scalable program, [redacted] which she describes as a "cutting-edge" initiative that will focus on nutrition education and awareness through the use of ". . . webinars, seminars, social media campaigns, [] community events," mobile apps, online courses, and educational materials. She further elaborates that her endeavor includes community-based workshops where experts will offer nutritional data, customizable recommendations, as well as online tools. She maintains that her endeavor will target a wide range of demographic backgrounds, ages, and socio-economic groups. She claims that as these groups improve nutrition, their communities will become healthier, and more self-reliant. She further claims that she will focus on providing health care professionals with tools and information to become advocates for her "Food is Medicine" philosophy, which may lead to a change in the standard of care by incorporating nutritional counseling. She asserts that the community impact from her endeavor includes systemic changes in public health and better environmental policies, which promote sustainable food systems. She intends to partner with government programs (for example, Medicare) to help individuals with diabetes, obesity, hypertension, and heart disease. Some of the additional impacts stemming from her endeavor include decreased emergency medical events and healthcare costs; increased worker productivity and resilience in communities; and improved quality of life and longevity. She will also implement a program called [redacted] which will introduce fresh, healthy food into students' daily meals. Finally, she asserts that by its fifth year of operation, her endeavor will create 18 jobs and have $951,518 in payroll expenses.

On appeal, she states her endeavor is "rooted in [her] extensive knowledge, academic background, and professional experience . . .." However, the Petitioner's experience and education in her field relates 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 proposed endeavor has national importance under *Dhanasar*'s first prong.

The expert opinion letter written by the Director of Dietetic Internship at the [redacted] School of Public Health, emphasizes the Petitioner's "performance in the area of corporate development and leadership," and concludes that her work is of national importance. However, as stated above, it is not the field or industry but the endeavor that the individual will carry out that must be shown to be of national importance. In general, the opinion cites to research and articles that may establish the importance of the field of nutrition, and proper nutrition in general, but these studies do not relate to the Petitioner's specific endeavor. Moreover, the opinion letter states that the Petitioner will provide services in the field of human resources and describes the importance of corporate training, which is not consistent with the Petitioner's description of her endeavor.[5] The Director concluded the letter lacked relevance because it discusses the importance of the Petitioner's field and occupation, rather than the national importance of her endeavor. We agree and note that the additional discrepancies in the letter further erode its probative value. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (standing for the proposition that we may, in our discretion, use opinion statements submitted by a petitioner as advisory but, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that opinion); *see also Matter of Chawathe*, 25 I&N Dec. at 375-76 (standing for the proposition that a petitioner must support their assertions with relevant, probative, and credible evidence).

[5] We note that the Petitioner's proposed endeavor does not include human resources or corporate training.

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. *Dhanasar,* 26 I&N Dec. at 889. Although the Petitioner's statements reflect her intention to provide nutritional consulting and well-being services, she has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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 establish the Petitioner's proposed endeavor stands to sufficiently extend beyond potential customers, or schools or health offices to impact the nutrition and healthcare field or U.S. economy more broadly at a level commensurate with national importance.

We acknowledge the Petitioner's evidence highlighting the United States' need to attract highly skilled workers with advanced degrees in STEM fields. Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *Id.* at 890. However, here, the record does not suggest that the Petitioner intends to advance STEM technologies and research. Moreover, while the Petitioner may offer nutrition and education services to her clients and the healthcare professionals she trains, beyond mere assertions, she has not established how her company would affect STEM employment levels in her industry or the U.S. economy more broadly. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

Finally, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although she projects her endeavor will create 18 jobs by its fifth year of operation, she does not sufficiently detail the basis for these staffing projections, nor does she adequately explain how the staffing projections will be realized. *Id.* Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Dhanasar*, 26 I&N Dec. at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

C. *Dhanasar's* Second and Third Prongs

As the Petitioner has not established the national importance of her proposed endeavor, we decline to reach and hereby reserve the Petitioner's arguments regarding her eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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 she has not demonstrated that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.