U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37386649

Date: APR. 02, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, who intends to be the chief executive officer (CEO) of her own company, 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 section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas 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. 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 qualify for the underlying EB-2 visa classification, petitioners must establish they are advanced degree professionals or individuals of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If petitioners establish eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S.

Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] 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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner asserts she has the equivalent of a U.S. bachelor's degree in legal studies with over 15 years of experience. Her proposed endeavor is to be the CEO of her own company, which will provide guidance and advice to clients on various aspects, including property purchases, financial resources, market research, historical data analysis, and current market conditions or trends. According to the business plan, her company will be headquartered in Florida and specialize in assisting low-income populations by providing advice and guidance on mortgage loan applications, negotiating with lenders, developing financial models and fundraising strategies, and conducting market research. It will also offer consulting services to businesses, including implementing risk management strategies to ensure compliance with relevant laws and regulations, and offer trainings and seminars to its clients.

The Director determined the Petitioner met the requirements for the underlying EB-2 visa classification as an advanced degree professional. However, the Director concluded the Petitioner had not demonstrated the national importance of her proposed endeavor under the first prong of *Dhanasar's* framework, that she was well positioned to advance her proposed endeavor under the second prong, and waiving the job offer requirement would benefit the United States under the third prong of Dhanasar.

Upon de novo review, we conclude the Petitioner has not established by a preponderance of the evidence that she is eligible for the underlying EB-2 visa classification or that a waiver of the required job offer would be in the national interest.

A. EB-2 Visa Classification

The Petitioner asserted in the record below that she qualified for the underlying EB-2 visa classification as an advanced degree professional. See section 203(b)(2)(A) of the Act.[2] An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id. The Petitioner's academic record and credential evaluation report demonstrate she attended the [redacted] Brazil and was awarded the foreign equivalent of a U.S. bachelor's

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).
[2] The Petitioner did not claim she qualifies for the underlying EB-2 visa classification as an individual of exceptional ability in the sciences, arts, or business, the alternative ground of establishing eligibility. Id.

degree in legal studies in March 2005. However, the Petitioner has not established she has at least five years of progressive post-baccalaureate experience in the specialty.

According to 8 C.F.R. § 204.5(g)(1), evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the petitioner or of the training received. The Petitioner's initial brief stated she has been a highly competent real estate legal advisor for the past 15 years and has expertise in market research, historical data analysis, and current market conditions. She claims her progressive experience includes working as the legal assistant [redacted] in Brazil for less than a year, a lawyer for a legal association for less than a year, and a legal advisor to a real estate brokerage and advisory company for 15 years. However, the letters submitted in support of her progressive experience do not meet the requirements of 8 C.F.R. § 204.5(g)(1). For example, the letters submitted to demonstrate her experience do not contain a specific description of the duties she performed. Rather, one states she performed "administrative support services," another states she "collaborated as a lawyer, assisting and accompanying clients," and a third says she "legally advises clients in real estate transactions." As a result, the letters do not support she has five years of progressive experience in the specialty following her acquisition of her foreign equivalent bachelor's degree.

Further, where the person has five years of progressive post-baccalaureate experience in the same specialty as the degree and seeks to work in a related endeavor, the experience is generally considered to be qualifying. See generally USCIS Policy Alert PA-2025-03, Second Preference Eligibility for National Interest Waiver Petitions 8 (Jan. 15, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf (providing guidance on meeting the requirements of a member of the professions holding an advanced degree). However, postbaccalaureate experience may not be qualifying if it is unrelated to the proposed endeavor. Id. Here, according to the Petitioner's briefs and business plan, she seeks to establish that she has years of legal advisory experience in real estate, market research, historical data analysis, and current market conditions. Even if she had demonstrated this experience, she would also need to establish how this experience is related to her endeavor of being the CEO of her company, which, according to her business plan, includes running the daily operations, heading the individual businesses, and training staff.

The Petitioner has not established her eligibility for the underlying EB-2 visa classification and we withdraw the Director's determination to the contrary.

B. National Interest Waiver

The Director determined that the Petitioner's proposed endeavor has substantial merit under Dhanasar's first prong. In determining whether the proposed endeavor has national importance, we focus on "the specific endeavor that the foreign national proposes to undertake" and consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. 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.

On appeal, the Petitioner asserts the Director did not properly consider the evidence, specifically the submitted business plan and expert letter. With respect to the business plan, the Director determined that the Petitioner did not demonstrate how the plan's projections regarding staffing levels and real-estate investment activity, for example, would impact the U.S. regional or national economy at a level of national importance. The Petitioner asserts that projections are an estimate, and she is not required to prove them or that she is even required to provide evidence of economic impact. However, the Director was not asking the Petitioner to prove her projections, but rather properly concluded she had not demonstrated the economic significance of the projected data contained in her business plan. The Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally to reach the level of "substantial positive economic effects" as contemplated by Dhanasar. Id.

Further, where a petitioner is asserting her proposed endeavor will have substantial economic impact, it is her burden to establish her assertions by a preponderance of the evidence. The submitted projections, without supporting evidence providing any basis for the projections or the economic significance of the projections, do not meet the preponderance of the evidence standard. See Matter of Chawathe, 25 I&N Dec. at 375-76 (providing we consider not only the quantity, but also the quality, including relevance, probative value, and credibility, of the evidence in determining whether a petitioner has met the burden under the preponderance standard). As a result, we agree with the Director's determination that the Petitioner did not establish her proposed endeavor would have substantial positive economic effects, either to the Florida region or the U.S. economy more broadly at a level commensurate with national importance. Matter of Dhanasar, 26 I&N Dec. at 890.

The Petitioner also argues that demonstrating economic impact is not the only way to establish national importance. We agree, but note that contrary to the Petitioner's assertions, the Director did not solely deny the petition based on the Petitioner's lack of corroborating evidence of economic impact. The Director also determined, for example, that the Petitioner's evidence did not demonstrate that her proposed endeavor would have implications outside of the company's proposed clients to show a broader impact to the field or industry.

The Petitioner further asserts that the Director failed to mention how her proposed endeavor would, for example, bring support to families and stakeholders in the real estate market allowing them to have access to affordable housing and would provide clients essential information to navigate the complex world of real estate financing and how her endeavor aligns with the goals of government initiatives, such as supporting affordable housing development. She also highlights portions of the expert letter similarly claiming her endeavor will, for instance, enhance the well-being of communities and will hold global significance in affordable housing sectors. However, neither the Petitioner in her briefs or business plan nor the author of the expert letter supported their assertions regarding the alleged broader implications of the Petitioner's proposed endeavor with corroborating details or evidence. Further, merely working in an important field or in an area a government entity has described as a priority is sufficient to establish the national importance of the proposed endeavor. See id. at 889 (explaining that in determining national importance, we do not focus on the importance of the field,

industry, or profession in which the individual will work but on "the specific endeavor that the foreign national proposes to undertake").

The Petitioner also claims that her company aims to pioneer innovative solutions in real-estate business strategy. We acknowledge that the Dhanasar decision contemplates 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. at 893. However, the Petitioner did not identify in the record below or now on appeal the innovative solutions she intends to implement or explain how these measures would have global or national implications to the field beyond the individuals or entities using them. Moreover, the Petitioner has not demonstrated the extent to which her proposed endeavor's methods or strategies improve upon those already available and in use in the United States such that her proposed endeavor would have national or global implications within her field or for the United States.

The Petitioner has not established the national importance of her proposed endeavor under *Dhanasar's* first prong. Because this issue is dispositive of the appeal, we reserve the Petitioner's arguments regarding whether she meets the remaining Dhanasar prongs to demonstrate she merits a discretionary waiver of the job offer requirement in the national interest. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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

We withdraw the Director's determination that the Petitioner qualifies for the underlying EB-2 visa classification. In addition, the Petitioner has not established the national importance of her proposed endeavor, a requirement to establishing prong one of *Dhanasar's* framework. Consequently, the Petitioner has not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

ORDER: The appeal is dismissed.