U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30558747

Date: APR. 4, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information security consultant, 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 did not establish that she was eligible for the requested classification or that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that her proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining *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).

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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

Once eligibility for the EB-2 visa classification is established, a petitioner must then establish that they merit 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. at 889, 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.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that she is a "systems engineering professional with more than 14 years of experience in information technology auditing, information security and cybersecurity risk management, business continuity and regulatory compliance in the financial, insurance, retail and card processing industries." Her proposed endeavor is to create a consulting company to advise U.S. businesses on cybersecurity issues, including risk management, strategy and system implementation, and alignment to best practices and regulatory compliance. In addition to her consulting services, the Petitioner states that she will also present lectures and workshops in schools and universities to promote the practice of information security. She also intends to promote careers in science, technology, engineering and mathematics (STEM), "to encourage young people to study technology careers such as cybersecurity, which have a lack of professionals."

With the initial filing the Petitioner submitted her resume and evidence of her education and experience. She submitted an action plan, dated October 2022, describing her proposed endeavor, and a personal statement, dated September 2022, discussing her claimed eligibility for a national interest waiver. She also submitted recommendation and support letters, certificates of achievement, and industry reports and articles discussing cybersecurity and its importance as an initiative of the U.S. government.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest

[1] *See also 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 to be discretionary in nature).

[2] The record demonstrates that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree awarded in 2007, followed by more than five years of progressive experience. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

waiver. The Petitioner's response to the RFE includes an updated personal statement dated May 2023, a business plan, additional letters of recommendation, a letter of intent to work with the Petitioner for cybersecurity enhancements, and an email from the president of the [redacted] Chamber of Commerce suggesting that the Petitioner become a member.

In the Petitioner's business plan, she states that the main objective of her business is "to provide services to meet the demand for security and cybersecurity services in companies of different sectors, especially small companies." The business plan includes a discussion of required resources and talent management, a market analysis, and a financial summary. The Petitioner projects that her business will have a total of seven employees by its fourth year. In her financial summary, the Petitioner projects that her business will have a net income of $416,402 by its fourth year.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner submitted sufficient evidence to demonstrate that her proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that her proposed endeavor had national importance, that she was well-positioned to advance her proposed endeavor, or that, on balance, waiving the job offer requirement would benefit the United States. The Director stated that the record did not demonstrate that the Petitioner's proposed endeavor will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in her field of endeavor, going beyond her clients. The Director noted that the Petitioner's broad assertion that there is a demand for her skills is insufficient to establish that her proposed endeavor is of national importance. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of her prospective contributions to the United States, an urgent national interest in her contributions, the potential creation of jobs, or that her self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Director's decision "contains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." The Petitioner asserts that the Director erred in not reviewing the totality of the evidence and applying the requisite preponderance of the evidence standard. The Petitioner states that the Director "did not provide a meaningful review of the evidence such that appropriate guidance was provided to rectify the perceived issues." In her brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that she merits a national interest waiver.

A. Substantial Merit and National Importance

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

The relevant question is not the importance of the field, 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 Id.* 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.

The Petitioner submits her personal statements in attempting to support the national importance of her proposed endeavor. On appeal, the Petitioner asserts that these statements are objective documentary evidence demonstrating the national importance of her proposed endeavor by a preponderance of the evidence. The Petitioner's initial personal statement, dated September 2022, discusses her experience in cybersecurity and her accomplishments during her employment with various companies. This statement does not describe her proposed endeavor and, as the Director noted in the RFE, was not sufficient to demonstrate that her proposed endeavor has national importance. The Petitioner's May 2023 personal statement only briefly describes her proposed endeavor. The statement provides general information about cybersecurity, including why cybersecurity services are important to the United States and what types of businesses require cybersecurity services. "In determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (emphasis added). The Petitioner's personal statements provide generalized projections that are not specific and detailed enough to establish the potential prospective impact of her proposed endeavor.

The Petitioner also submits her 2023 business plan. The Petitioner asserts that her proposed endeavor will "make America's businesses more robust and thus improve the U.S. economy as a whole." However, the Petitioner has not supported these assertions with sufficient independent, objective evidence. The Petitioner's projection of creating seven jobs does not demonstrate a significant potential to employ U.S. workers or support that her proposed endeavor will have substantial positive economic effects. The evidence does not suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's experience will reach beyond benefitting her own company and clients or have broader implications within the field of cybersecurity. The record does not establish that her proposed endeavor stands to impact the field as a whole.

The Petitioner submits articles and industry reports describing the importance of cybersecurity, as well as an Executive Order demonstrating that STEM is a national initiative.[3] The record includes a report from Interpol dated August 2020, discussing a rise in cyberattacks. The report projects that cybercrime is likely to increase as a result of the COVID-19 pandemic. Although the report tends to support that demand for cybersecurity services may be increasing, the report does not specifically discuss the Petitioner's proposed endeavor. Similarly, a printout from the U.S. Department of Homeland Security website lists "Secure Cyberspace and Critical Infrastructure" as part of its mission. While the statement identifies cybersecurity threats as critical, the evidence provides general information and does not focus on the Petitioner's specific proposed endeavor. As noted above, the Acting Director determined the endeavor has substantial merit, and we agree. However, the question we are examining here is national importance.

[3] While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

When 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 Matter of Dhanasar*, 26 I&N Dec. at 889. Much of the Petitioner's evidence relates to the cybersecurity field generally, rather than her specific proposed endeavor. Although we agree that cybersecurity and STEM are important and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the Petitioner's specific proposed endeavor. Even considering the articles and reports, collectively and in the totality of circumstances, the record contains insufficient information or evidence regarding the Petitioner's proposed endeavor to show broad potential implications demonstrating national importance.

The Petitioner also submits recommendation letters from former colleagues. We note that the letters describe the Petitioner's achievements as having benefitted her employers or being key to the company, rather than describing achievements that had broad implications to the field of cybersecurity or skills differ from or improve upon those already available and in use in the United States. Although the letters praise her qualifications and professional accomplishments, the Petitioner's skills, expertise, and abilities 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 he proposes to undertake has national importance under *Dhanasar's* first prong.

On appeal, the Petitioner relies upon the evidence she previously submitted and asserts that the Director imposed a novel standard of evidence. However, she does not identify the novel standard or demonstrate an erroneous application of law or policy.

The Petitioner also asserts that the denial is deficient because the Director did not consider the entirety of the evidence in the record. She states that the failure to consider all the relevant evidence submitted has been found to be an abuse of discretion and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mich. 1994). While we agree that an adjudicator should consider the relevant evidence in the record,[4] we also note that U.S. district court decisions, such as the one the Petitioner cites, are not binding precedential authority. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). More importantly, however, the Petitioner does not sufficiently support her claim that there was relevant evidence that the Director did not consider.

The Petitioner contends that the Director did not adequately review the initial evidence or evidence submitted in response to the RFE, as the evidence "contained ample arguments from the Petitioner supported by objective, documentary evidence." We note that the decision discusses each of the claimed pieces of evidence the Petitioner lists in her brief. Nevertheless, we address them again herein. The Petitioner continues to rely upon the asserted demand for the services she will provide, her professional experience and achievements, and the importance of the field of cybersecurity generally. However, as set forth above, the evidence does not sufficiently demonstrate the Petitioner's proposed

[4] *See* 8 C.F.R. § 103.2(b)(1).

endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.[5] *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[5] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that she was well-positioned to advance the proposed endeavor, or 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the three *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that she meets all of the three *Dhanasar* prongs.