U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37479763

Date: APR. 04, 2025

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 the record did not establish 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, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes 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: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States. *Id.*

[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).

II. ANALYSIS

A. EB-2 Classification

The Director found the Petitioner qualified for the underlying EB-2 classification as an advanced degree professional. However, as the resolution of the issues pertaining to the Petitioner's eligibility for a national interest waiver under the *Dhanasar* analytical framework is dispositive of this appeal, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

B. National Interest Waiver

The Petitioner proposes to establish and operate an alcoholic beverage trade and wholesale company, and serve as its chief executive officer (CEO). Through her company, she plans to partner with local U.S. distilleries and engage in the international export of American liquor, wine, and other beverage brands. In her third and fourth years of operating her company, she intends to open two bar restaurants, which she plans to later franchise to other entrepreneurs.

The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under *Dhanasar's* first prong.[2] On appeal, the Petitioner reiterates her eligibility for a national interest waiver and alleges that the Director failed to properly consider all relevant evidence and apply the *Dhanasar* framework. In particular, she asserts that the Director did not properly consider the business plan's "concrete metrics," and therefore arbitrarily concluded that her claimed job creation and economic impact were insufficient, without setting any clear standard for evaluation.

Upon de novo review, we conclude the evidence does not demonstrate that the proposed endeavor has national importance. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* 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.

Here, the Petitioner has not established that her proposed endeavor's prospective impact rises to the level of national importance. The Petitioner claims that her endeavor will result in "substantial positive economic effects" through job creation, taxes paid, and significant revenue generation, benefitting the local economy and contributing to the growth of the U.S. gross domestic product (GDP). Additionally,

[2] The Director also found the Petitioner did not satisfy *Dhanasar's* second and third prongs.

she claims her businesses will help small domestic alcoholic beverage producers expand into the Chinese market, thereby supporting the U.S.-China trade balance and reducing the U.S. trade deficit.

In support of these claims, the Petitioner points to her business plan, which anticipates the company employing 5 individuals with sales of $1,885,000 in the first year of operation and increasing to 36 employees with sales of $7,488,099 by the fifth year of operation. She also estimates her businesses will create 84 indirect jobs by the fifth year.[3] However, even if we assumed all the metrics and projections in the business plan were accurate, the Petitioner still would not have established that her endeavor's prospective impact rises to the level of national importance. For instance, the Petitioner has not explained her revenue data's significance or how that data shows that any potential benefits to the regional or national economy, even in an economically depressed area or HUBZone, would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*.[4] *Id.* at 890. Similarly, the Petitioner has not elaborated on the relevance of her employment numbers and detailed how such future staffing levels would provide substantial economic benefits to Houston, Texas, where her businesses will be headquartered, or the U.S. economy more broadly. As such, even if the Petitioner's businesses attained these projections, we would still conclude that she has not adequately demonstrated that her endeavor would operate on a scale rising to the level of national importance. While any increased business activity has the potential to positively impact the economy, the Petitioner has not established how the economic activity resulting from her specific businesses would produce such substantial regional or national economic impacts that it would be of national importance.

The Petitioner also emphasizes the benefits produced by franchises generally and so contends that her endeavor is nationally important because it supports small business growth, promotes entrepreneurship, and enhances social welfare through offering unemployed individuals and aspiring entrepreneurs opportunities to earn income. She also contends that her businesses align with national priorities and government initiatives like the 2023 National Export Strategy, and that it will support digitalization efforts for small and medium enterprises. She claims that her endeavor will also complement policies aimed at promoting arts, cultural vitality, and equitable economic growth across underserved communities. In support of these claims, the Petitioner submitted various industry reports and articles, including documents addressing how dining out boosts mental health, the impact of franchises on the economy, financial data on U.S. spirits exports, the benefits of trade, and entrepreneurship and immigrants in America.

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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In this case, the articles and reports do not discuss the Petitioner's specific endeavor or how it, in particular, would

[3] While the Petitioner heavily relies on the assertion that her future franchises will employ over 1,000 U.S. workers and generate $50 million in revenue by the ninth year of operation, her reliance upon projections potentially materializing almost a decade after beginning her endeavor are too tenuous and speculative to support her claims of significant and concrete economic impact.

[4] There are several required qualifications to participate in the HUBZone program, including that the business seeking to participate must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. Here, the record does not establish that the Petitioner's business would qualify for the program.

have a broader, nationally significant impact on the industry, economy, or social welfare beyond the clients that she would serve.

While the Petitioner asserts that her endeavor will introduce "innovative business models and advanced digital systems in the U.S., elevating industry standards and competitiveness," she has not, for example, specifically explained what this business model is or how her digital system differs from what is already available in the market. The record lacks support that the Petitioner's particular work offers original innovations that contribute to advancements or otherwise has broader implications for the industry. *Id.* at 889. Although the Petitioner also contends she will integrate art and cultural activities into her franchise locations, which she claims will contribute to community enrichment and "strengthen the creative economy," the record does not show how these activities at her bar restaurants will influence the field more broadly or have a wider nationally important impact.

The expert opinion letter authored by [redacted] a dean and professor at [redacted] University, as well as other support letters written by the Petitioner's business associates, also do not establish the endeavor's national importance. The professor's letter focuses on the importance of the wholesale and export industries, as well as the economic importance of trade. However, as noted above, the Petitioner's work in an industry or field that is the subject of or adjacent to national initiatives is not sufficient in and of itself to establish the national importance of the proposed endeavor. *See id.* at 889 (stating that the first prong's focus is on "the specific endeavor that the foreign national proposes to undertake"). The Petitioner must still demonstrate the proposed endeavor's potential prospective impact in that area of national importance. Although the professor speculates that the Petitioner's endeavor will support local businesses, introduce American-made products within the domestic and Chinese markets, optimize the U.S. GDP, and produce other economic benefits, the professor does not explain how this specific endeavor, as opposed to exporters, wholesalers, and business owners generally, would create such broader impact in the industry, region, or nation that it would rise to the level of national importance. Furthermore, while the professor and other support letters highlight the Petitioner's skills, expertise, and record of success, these are considerations under *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated her future work's national importance, which she has not done.

For all the reasons discussed, the evidence does not establish the proposed endeavor's national importance as required by *Dhanasar's* first prong.

III. CONCLUSION

As the Petitioner has not met *Dhanasar's* first prong, she has not established her eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of this appeal, we decline to reach and hereby reserve remaining issues and arguments concerning whether she has established eligibility for the underlying EB-2 classification, as well as eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.