U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30644094

Date: APR. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and finance manager, 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 record did not establish the Petitioner's eligibility for the requested national interest waiver. 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.

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.

Once a petitioner demonstrates eligibility for the underlying EB-2 classification, they 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. 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;

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature)..

- 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 qualifies for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the proposed endeavor has substantial merit as the endeavor falls within the range of areas we indicated could demonstrate an endeavor of substantial merit: business and entrepreneurialism. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not show it has national importance.

The Petitioner proposes to establish her own company in the United States to provide financial management services to small and medium-sized companies within the hospitality and tourism industry. Through this endeavor, the Petitioner intends to help her clients "generate business efficiency and profitability in areas of employee shortage and retention, business efficiencies and financial support to increase revenue and profitability, system process improvement to improve automation and guest satisfaction, and strategic and bespoke advice to hospitality and travel clients." According to the Petitioner, her company will "contribute to increased financial security among [her] clients," and will thus allow these companies to "improve operations and achieve better productivity and profitability levels, therefore generating revenues within the country and creating employment opportunities." The record includes a five-year business plan, which outlines the specific services her company would offer, including: business and financial expertise; design, development, and implementation of data analytics and automation of systems; recruitment and training of finance professionals, specialized consultancy, and wider contribution in the United States (which would include publishing case studies and blogs online). The Petitioner also submitted multiple recommendation letters from prior customers and industry professionals attesting to her business acumen and prior successes in the field, three expert opinion letters, and industry reports and articles discussing the importance of the hospitality and tourism industry to the U.S. economy, as well as the economic challenges facing these industries, and national initiatives aimed at improving their financial outlook.[2]

On appeal, the Petitioner generally asserts that the Director did not apply the correct burden of proof and did not properly consider the evidence on record. The Petitioner relies on the same arguments previously put forth and maintains that the evidence was sufficient to demonstrate that she meets all three prongs under the *Dhanasar* framework.

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

Upon de novo review, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance. In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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 asserts she is "proposing a complete overhaul of the paradigm" of this industry, and her "goal is to trigger a domino effect that elevates the broader U.S. service and cultural exchange sectors." However, the evidence does not support a conclusion that her endeavor will directly result in broader implications to the field, beyond her immediate clients. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's clients, like the offerings outlined in the business plan, would not have broader implications in the field. *Id.*

The Petitioner's continued reliance on background information and statistics concerning the hospitality and tourism industries is also not persuasive. We reviewed the expert opinion letters from Dr. S-S-, Dr. H-Q-, and Dr. H-G-P-. But they offer little additional explanation to establish the national importance of the Petitioner's proposed endeavor. They do not discuss the direct potential impact of the Petitioner's proposed endeavor or of the offerings outlined in her business plan. Instead, they focus primarily on the importance of the hospitality and tourism field, as well as the importance of financial management consulting in general. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letters lack relevance with respect to the national importance of the Petitioner's proposed endeavor.

Likewise, while the recommendation letters and the expert opinion letters discuss the Petitioner's expertise in the field and her ability to assist her customers through her consultancy, the evidence does not establish broader implications from her work. While we recognize that the Petitioner has had a successful career advising hotels and other agencies in the hospitality and tourism industry, and has presented at industry conferences, the record does not establish her impact to the field beyond her immediate clients. Moreover, a petitioner's expertise and record of success 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 the national importance of her proposed endeavor.

Finally, we agree with the Director's conclusion that the Petitioner did not establish that her endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* While the Petitioner asserts that "the cumulative success of [her customers] can boost the overall U.S. hospitality industry, catalyzing local economies and driving the nation's recovery from the pandemic," and her work will "invigorate an industry, and by extension, invigorat[e] the national economy," the record does not support these assertions. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her proposed endeavor would rise to the level of national importance. In the business plan, the Petitioner indicated that by the fifth year of operations she anticipates her company will have an annual revenue of $9 million, and an annual federal tax payment of $677,793. She also indicated that she intends to employ 61 employees with a payroll expense of $4,978,036 annually. However, the business plan provides no explanation for the basis of these projections other than the explanation of her hourly rates for each service offering. Even if the endeavor's revenue and job creation projections were more than conjecture, they do not establish that the endeavor would operate on a scale rising to the level of national importance, as the Petitioner has not explained how these proposed employment numbers and revenue will impact the area of intended operations, nor has she provided evidence that her business operations will impact an economically depressed area.

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

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.