U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29686164

Date: APRIL 9, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a human resources specialist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion[1], grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Petitioner proposes to work in the United States as a human resources specialist through her own consulting company. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

[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).

The Director issued a request for evidence (RFE) requesting, among other things, further evidence of how the proposed endeavor would be of national importance. In response, the Petitioner provided additional documents including a business plan, resume, and industry reports and articles. In denying the petition, the Director concluded that although Petitioner's proposed endeavor has substantial merit, the Petitioner did not establish the national importance of her endeavor. The Director also determined that the Petitioner did not establish her proposed endeavor has broader implications, has significant potential to employ U.S. workers, and that it would broadly enhance societal welfare or cultural or artistic enrichment. Furthermore, the Director found that the Petitioner did not provide sufficient evidence to confirm whether her proposed endeavor will have substantial positive economic effects, particularly in an economically depressed area as contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner contends that the Director erroneously denied the petition and misapplied the law. The Petitioner further argues that the Director did not apply the proper standard of proof and instead imposed a stricter standard. The Petitioner also claims that the Director did not give "due regard" to her submission of evidence. She highlights the evidence submitted in support of the petition and in response to the RFE to underscore the sufficiency of the submitted evidence and contends that she submitted sufficient evidence to demonstrate the national importance of her proposed endeavor.

As previously noted, the first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The record shows that the Petitioner's proposed endeavor is to operate a human resources consulting company in Florida. She aims to recruit, interview, hire, and train staff and personnel, in addition to assisting small and medium-sized companies with their human resources requirements. The Petitioner claims her proposed endeavor will provide benefits that extend beyond her own company because she specializes in a niche field where few possess the required knowledge and expertise. The Petitioner further asserts that she will be able to impact all businesses in the United States by providing services that are essential to every business.

The Petitioner maintains that her proposed endeavor is of national importance because it will generate "substantial ripple effects" on key commercial and business activities and will serve the business development and functions of U.S. companies. The Petitioner submits recommendation letters that discuss her experience in human resources, including assisting operational employees, her background as a business psychologist, and her involvement in the planning, selection, and monitoring of workers. The Petitioner also submits a letter expressing interest in hiring her company to offer behavioral training. In her statement, the Petitioner emphasizes her experience in the human resources management and claims that she will increase employment opportunities and salaries by leveraging her expertise.

Although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's claimed extensive experiences as a human resources specialist are material to *Dhanasar's* second prong—whether an individual is well positioned to advance a proposed endeavor—but they are immaterial to the first

Dhanasar prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting her work's "potential prospective impact." While the Petitioner claims that her proposed endeavor is of national importance, she has not offered sufficient information and evidence to demonstrate that her proposed endeavor's prospective impact 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 include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a human resources specialist operating her consulting business offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

Though we acknowledge the Petitioner's assertions and the evidence she submitted in support of her petition, we conclude that the Petitioner has not shown her proposed endeavor stands to sufficiently extend its benefits beyond her immediate customers to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that her specific endeavor has national importance under *Dhanasar's* first prong. The Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. The Petitioner's business plan anticipates that her company will hire nine employees by the first year and 101 employees by the end of year five. Furthermore, the Petitioner's plan offers total revenue projections of $402,000 in year one to $1,680,000 in year five. The Petitioner has not however presented evidence indicating that the benefits to the regional or national economies resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Specifically, the Petitioner has not demonstrated that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States.

While the Petitioner asserts that her proposed endeavor of helping small and medium-sized companies manage their human resources needs would grow the overall economy, she has not demonstrated that her undertaking has implications beyond her company's customers to enhance societal welfare on a broader scale indicative of national importance. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not indicate that the benefits to the regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner refers to industry reports and articles to highlight the crucial role that business development professionals play in every business and emphasize the importance of her proposed endeavor. She argues the articles demonstrate the national importance of her proposed endeavor, thus impacting "nation-wide activities and business productivity." The record nonetheless does not establish how the proposed endeavor will have broader implications beyond benefitting the Petitioner's customers and businesses she elects to work with. As previously mentioned, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not sufficiently explained how she will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance. Without evidence projecting U.S. economic impact or job creation attributable to the Petitioner's proposed endeavor, it is insufficient to assert that the benefits to the U.S. regional or national economy resulting from the proposed endeavor would rise to the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *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).

III. CONCLUSION

As the Petitioner has not met the *Dhanasar* analytical framework's requisite first prong, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.