U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30625525

Date: APR. 15, 2024

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 a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 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.

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. If 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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 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's decision did not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree. Instead, the decision only addressed the Petitioner's eligibility for a national interest waiver. Therefore, the issue for consideration on appeal 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 and that she is well-positioned to advance that endeavor under the first and second prongs of the *Dhanasar* analytical framework.[2]

With respect to her proposed endeavor, the Petitioner indicated that she intends to "develop a consulting service, especially in relation to strengthening of marketing and the accounting-administrative area of small companies." She asserted that she planned to open "a specialized consulting and advisory company in strengthening the marketing and accounting-administrative area of small companies nationwide." The Petitioner further explained that "an initial diagnosis is made to the client, which results in a report showing its weaknesses and strengths. This report is intended to quickly and truthfully identify the opportunities for improvement that the company is presenting . . . ."

In response to the Director's request for evidence, the Petitioner stated:

> My proposed endeavor is to take advantage of my extensive experience in fiscal growth, business development, and organizational structuring in order to improve the internal structuring and solidity of United States small to medium sized enterprises (SMEs). Specifically, I will work with these businesses . . . to develop unique strategies to improve their operations and efficiency, providing these businesses with the tools they need to thrive in a competitive marketplace. Also, my work will allow these businesses to grow, generating new hires, and ultimately leading to improving the economy overall. As I work with SMEs and develop individualized strategies, I also plan to disseminate my work at relevant conferences.

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. *Dhanasar*, 26 I&N Dec. at 889. The Director's decision did not render a determination as to whether the Petitioner meets this prong.

[2] Because the Petitioner has not demonstrated her eligibility for a national interest waiver on appeal, we need not remand the decision for the Director to determine whether she qualifies for the underlying EB-2 visa classification.

The record includes information about SMEs, the U.S. Small Business Administration's Office of Advocacy, support for SMEs during the COVID-19 pandemic, and the U.S. Treasury Department's "Assistance for Small Businesses." The Petitioner also submitted articles discussing small businesses' value to local economies; micro, small, and medium enterprises trends for 2022; business advice for entrepreneurship and small firms; the rise in corporate bankruptcies; the impact of COVID-19 on small business owners; and the ways that small businesses help the economy. In addition, she provided information about the Biden Administration's "American Jobs Plan," "American Rescue Plan," "Immediate Priorities," "Interim National Security Strategic Guidance," and "initiative to increase federal contracting with small disadvantaged businesses." We conclude that the aforementioned information, the Petitioner's statements, and other evidence in the record help show that her proposed endeavor has substantial merit.

In determining national importance, however, the relevant question is not the value of small businesses or government initiatives that support them; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of her specific proposed endeavor.

The Petitioner also provided letters of support from L-H-R-D-, A-Y-M-Y, C-C-, C-O-, S-M-R-C, D-G-P-, L-L-, and J-A-A- discussing her business capabilities and experience. The Petitioner's education, skills, knowledge, and prior work in her field, however, 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 that she proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner has not provided evidence demonstrating that her proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the potential economic activity of her specific endeavor stands to generate substantial positive economic effects in the region where her company will operate or in other parts of the United States.

In determining national importance, we explained in *Dhanasar* 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*. at 889. 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. While the Petitioner's statements reflect her intention to provide business development and structuring services to her company's clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor 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, we

conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its future clientele to impact her field, the business consulting industry, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's business projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id*. at 890.

We adopt and affirm the Director's decision that the Petitioner does not meet *Dhanasar's* second prong. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director thoroughly reviewed, discussed, and analyzed the Petitioner's claims that she is well positioned to advance her proposed endeavor under the second prong of *Dhanasar*, as well as her academic record, recommendation letters, work experience, and letters of interest from two potential customers.

While the letters of support, training certificates, and other evidence in the record indicate that the Petitioner has some experience in sales, marketing, accounting, and business administration, the record does not show that this past experience renders her well positioned to advance her proposed endeavor aimed at operating a business consulting and advisory company for SMEs. Nor do the Petitioner's two personal statements discussing her plans to operate a consulting company offer sufficient details relating to her proposed endeavor to conclude that she is well positioned to advance that endeavor. We acknowledge the two letters from L-L- and J-A-A- expressing interest in utilizing the Petitioner's consultancy services. This evidence, however, does not reflect a level of interest from potential customers, users, investors, or other relevant entities or individuals demonstrating that she is well positioned to advance her proposed endeavor. Furthermore, the Petitioner has not shown that her track record of running a business, business plan for future activities, and progress towards achieving her company's goals render her well positioned to advance the proposed endeavor. Accordingly, we agree

with the Director that the Petitioner has not established she satisfies the second prong of the *Dhanasar* framework.

III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework,[3] we conclude that she has not established 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[3] Because the documentation in the record does not establish the Petitioner meets the first and second prongs of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since these issues are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the third prong 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).