U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30625363

Date: APR. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business 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. 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 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 a 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 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. *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 intends to work in the United States as a business manager. In her initial professional plan, the Petitioner stated that she intended to continue working "in the RD&I [research, development, and innovation] market . . . to continue managing, maintaining good working relationships, and identifying any opportunities for new business." The Petitioner contended that her leadership and business skills would allow her to "solve problems more efficiently, helping create new methods that will ultimately generate business, increase the solutions portfolio and knowledge" and "can be applied wherever there is a shortage of skilled labor in [her] field in any region of the United States." Ultimately, the Petitioner asserted that her work as a business manager was nationally important because her endeavor would create jobs in the United States, generate more tax revenue, create intellectual property for businesses, and improve businesses' analysis and processes through agile methodologies. In support of the endeavor's national importance, the Petitioner also submitted her resume, an expert opinion letter, and industry articles on various business management occupations and the U.S. economy trends and outlook.[2]

In response to the Director's request for evidence (RFE), the Petitioner submitted a new professional plan stating that her "proposed endeavor is to work in [t]ransport [b]usiness [a]dministration and [l]ogistics . . . in the [t]ransport and [s]upply markets, developing and managing inventory control, market study, sales, and production forecast, and marketing intelligence in the marketing area." The

[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).

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

new professional plan describes the Petitioner's plans to "work with process optimization and business management" to "acheiv[e] significant financial results through automation, people development, and time management." The Petitioner also submitted an updated copy of her resume along with a new expert opinion letter.

The Director concluded that the record did not establish the national importance of the Petitioner's endeavor because the prospective impact of her endeavor would not sufficiently extend beyond her future employer(s) and their clients to lead to broader implications to the industry or field. Moreover, the Director concluded that the Petitioner did not establish that her endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects. The Director noted, for example, that the Petitioner had not provided sufficient information or evidence regarding projected economic impact or job creations attributable to her future work.

On appeal, the Petitioner generally asserts that the Director erred in their conclusion that the endeavor does not rise to the level of national importance. In doing so, the Petitioner relies on the same arguments she previously put forth in response to the Director's RFE, asserting that the record "vigorously demonstrate[s] that [she] securely meets the first prong of the *Dhanasar* framework." Notably, the Petitioner does not discuss the evidence in the record with specificity, nor does she explain how it supports her claims or otherwise overcomes the Director's conclusions. Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).

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.

Although the Petitioner's statements in the record reflect her intention to provide valuable services to her future employer(s) and clients, including "increa[sing] their market share, improv[ing] sales, and reach[ing] new customers," she has not provided sufficient information and evidence to demonstrate that the business growth resulting for her employer(s) and/or their future customers rises to the level of national importance. For example, while the Petitioner asserts that her work with companies of all sizes would "enhanc[e] the business ecosystem by making companies more customer-centric, reducing risks, and offering competitive advantages," she does not provide further explanation regarding how her endeavor would have broader implications to the field. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 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 *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 too, we agree with the Director that the record does not show

that the Petitioner's proposed endeavor stands to sufficiently extend beyond her potential employer(s) and customers to impact the business management field more broadly at a level commensurate with national importance.

The record also does not establish that the Petitioner's endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890. While the Petitioner asserts that helping companies develop marketing strategies and expand their business will "lead to increased economic activity within local communities," the Petitioner has not demonstrated how the economic activity directly resulting from her proposed endeavor would rise to the level of national importance contemplated under *Dhanasar*. Likewise, the Petitioner's assertion that the increased tax revenue resulting from the improvements of her employer(s) and/or customers' financial standing which "can be allocated to enhance societal welfare by funding essential program areas such as education, healthcare, and infrastructure" is also not persuasive to establish the national interest of her endeavor. Although any basic economic activity has the potential to positively impact a local economy and increase tax revenue, the Petitioner has not provided projected employment numbers and revenue growth to establish how her endeavor will impact the area of intended operations, nor has she provided evidence that her endeavor will impact an economically depressed area. The Petitioner's statements could reasonably apply to any business manager in the field who has a positive impact on their employer's operations, but Congress did not provide a blanket exemption for business professionals with respect to the job offer and labor certification requirement.

Finally, we reviewed the expert opinion letters from Dr. V-L- and Dr. M-I- and conclude that they provide little probative value in establishing the national importance of the Petitioner's endeavor. While Dr. V-L- concludes that the Petitioner's work "could benefit large-scale companies as well as medium sized companies in the United States," he does not elaborate on how these benefits would extend beyond the Petitioner's immediate employer(s) nor provide justification for his conclusion that the proposed endeavor will have broad implications to the field. Moreover, both expert opinion letters rely primarily on the importance of the industry to establish the national importance of the endeavor. For example, Dr. M-I- opines that, "[t]he transportation and logistics sector is critically important to the economy and welfare of Americans," yet, offers no explanation as to how the Petitioner's specific endeavor will offer "national or even global implications," to these industries. *Id.* at 889. 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.

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

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

ORDER: The appeal is dismissed.