U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30238740

Date: APR. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a personal finance and entrepreneurship consultant, 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 that a waiver of the classification's job offer requirement, 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 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. Next, a petitioner 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. at 889, 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;
- The individual is well-positioned to advance their proposed endeavor; and

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree. We also note that the Director stated in a Request for Evidence (RFE) that the endeavor had substantial merit. We agree with that determination. The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the Dhanasar framework.

The Petitioner, a personal finance and entrepreneurship consultant, plans to operate a U.S. company, C-F-A- LLC, which will provide a "wide range of services in the areas of Accounting, Taxes, Contract Management and Financial Consulting. She states that she has more than 18 years of experience in the accounting field working as a "Founder/CEO, Contracts Consultant, Tax Auditor, Tax Analyst, Accounting Analyst, and Tax Analyst [sic]." The Petitioner's last position was as the "Founder/CEO" of a company "specialized in tax services, accounting, auditing, and consulting" in Brazil. According to her business plan, the Petitioner intends to "establish a U.S.-based company that will provide a wide range of services in the areas of Accounting, Taxes, Contract Management and Financial Consulting."

With her initial filing, the Petitioner submitted evidence of her education and experience, a personal statement, a business plan, an expert opinion letter, letters of recommendation and support letters. She also provided industry reports and articles.

Following initial review, the Director issued a RFE, allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the underlying EB-2 classification as an advanced degree professional and for the national interest waiver. The Petitioner's response included a cover letter, an updated resume, supplemental employer letters, educational documentation, and supplemental support letters.

In her updated cover letter, the Petitioner reiterates that the main objective of her proposed endeavor "will strive to provide accounting, tax and financial services to her prospective U.S. clients." Her aim will be to "educate individuals, entrepreneurs, and SMEs [small- and medium-sized enterprises] on various financial and tax matters." In this way, the Petitioner argues that she will "support their financial health, long-term development, and their companies' market competitiveness."

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had established that she qualified for EB-2 classification as an advanced degree professional. However, the director concluded that the Petitioner had not established that her proposed endeavor was of national importance, that she was well positioned to advance her endeavor, or 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. With regards to the national importance component of the first prong of the Dhanasar analytical framework, the Director concluded that the Petitioner had not established that her proposed endeavor would have broader implications within the field of personal finance and entrepreneurship consulting, would have a significant potential to employ U.S. workers, would have substantial positive economic effects, or would broadly enhance societal welfare or cultural enrichment.

On appeal, the Petitioner submits a brief where she argues that the Director's decision contains "innumerous erroneous conclusion [sic] of law or statement [sic] of fact." She asserts that she is an "expert in Accounting and Taxation" and that she has "comprehensive industry knowledge, strategic skills, and proficiency in optimizing processes to create a lasting impact on the financial health, operational efficiency, and competitive advantage" of the companies she works for. Further, the Petitioner questions the Director's conclusion that she provided insufficient evidence to demonstrate her eligibility for the classification.

Regarding the question of national importance, the relevant questions is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889. Dhanasar provided examples of endeavors that may have national importance: having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." Id. at 889-90.

The Director concluded that the Petitioner did not provide a detailed description of her proposed endeavor and why it is of national importance. Further, the Director determined that the Petitioner had not demonstrated that her proposed endeavor stands to sufficiently extend beyond her organization and clients to impact the industry or field more broadly.

On appeal, the Petitioner argues that her proposed endeavor was sufficiently described in her business plan. The main claim of her proposed endeavor is that the Petitioner will establish a U.S. company, C-F-A- LLC, which will provide a "wide range of services in the areas of Accounting, Taxes, Contract Management and Financial Consulting."[2] As stated above, the company "will strive to provide accounting, tax and financial services to her prospective U.S. clients." Her aim will be to "educate individuals, entrepreneurs, and SMEs [small- and medium-sized enterprises] on various financial and tax matters." In this way, the Petitioner argues that she will "support their financial health, long-term development, and their companies' market competitiveness." As the "100% owner," the Petitioner "will act as the Company's Chief Executive Officer."

Further, the Petitioner argues that within her "Business Plan, an intricate depiction unfolds of how the enterprise conceptualized by [her] would engender a far-reaching transformation within the industry, transcending the confines of [her] organization." She asserts that her endeavor will enhance "U.S. government efforts to combat the Covid-19 pandemic." She states that she will use her "expertise in accounting, taxes and finance to guide [her company's] clients" in a variety of manners. The Petitioner further generally asserts that her company will "analyze financial information and develop financial strategies" that will "directly contribute to the nation's economy by creating jobs and generating taxes." She states that she will directly contribute to the "promotion of trade and investment" between Brazil and the United States via her being a Board Member of the Brazilian-American Chamber of

[2] We note that the Petitioner submitted an email showing that she had applied for an "Accounting Assistant" position and that the employer wanted to set up an interview with her. This evidence conflicts with the Petitioner's proposed endeavor to set up her own company. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). The endeavor must be clear in order to properly assess the proposed endeavor's national importance and potential economic impact.

Commerce. She envisions that her company will pay a total of $86,910 in taxes in the first year of operation and projects that taxes paid will increase to $217,999 by year five.

The Petitioner puts forth arguments on appeal that rely mainly on assertion and are not corroborated by the evidence in the record. For instance, while we laud the Petitioner's commitment to transfer "the skills and knowledge to the U.S. workforce" that will "create qualified industry professionals," we are unable to find evidence in the record that provides specific details of how that goal will be realized. Likewise, the Petitioner's assertions that her efforts to "contribute to the enrichment of the professionals' pool" will have more than an incremental impact on the suggested workforce shortage is unsupported. The Petitioner does not explain in detail how her company's projected tax payments will have more than incidental impacts on the field or on the economy.

According to the Petitioner, her company is "expected to obtain strong revenues on a progressive service-to-service basis." As a result, she states that her company will "strengthen its abilities to invest into specialized full-time staff and expand its services' reach across new attractive markets." The Petitioner believes this will "benefit the U.S. economy through the creation of more job[s]." Yet, the Petitioner does not provide a detailed explanation of how these projections, even if realized, will have broader implications within the field or have substantial positive economic effects. In the same way that the teaching activities proposed by the petitioner in Dhanasar were not shown to have a broader impact on the field of STEM education, here the Petitioner has not demonstrated that her proposed endeavor would have broader implications in the field of personal finance and entrepreneurship accountancy on the U.S. economy beyond the companies benefiting from the Petitioner's services. Matter of Dhanasar, 26 I&N Dec. at 893.

In her brief, the Petitioner states that "she intends to work in and serve some of the economically distressed communities known as Opportunity Zones."[3] Further, the Petitioner contends that her proposed endeavor "aligns with the locations of some of the underprivileged areas and communities that have high poverty rates" and are "Historically Underutilized Zones (HUBZone)." We note that the Petitioner has not provided evidence that her endeavor will participate in the Small Business Administration's HUBZone program or that the principal office of her business will be located in a HUBZone. Finally, the Petitioner has not demonstrated how her proposed endeavor will have substantial positive economic effects in an economically depressed area.

We note that the Petitioner also claims that her volunteering with the IRS's Volunteer Income Tax Assistance (VITA) program is of national importance. She points out that VITA "helps low- to moderate-income individuals, persons with disabilities, the elderly, and limited English speakers file their taxes each year." Additionally, the Petitioner states that the "IRS awards matching funds to these support organizations that offer free tax preparation services" across the United States. But, the Petitioner's participation as a volunteer in the VITA program does not show that her proposed endeavor will have broader implications in the field, will have substantial positive economic effects, or that it will broadly enhance societal welfare.

[3] She includes this argument mainly in relation to the *Dhanasar's* third prong rather than in relation to national importance.

Professor [redacted] of [redacted] authored a letter in support of the Petitioner's petition. We acknowledge that the opinion letter includes an analysis of the national importance of the Petitioner's proposed endeavor. Professor [redacted] asserts that the Petitioner "help[ing] U.S. businesses persevere through the economic crisis is of national importance." He further states that the Petitioner's proposed endeavor "has significant potential to employ U.S. workers and has other substantial positive economic effects." While Professor [redacted] correctly points to indicators of national importance, he does not explain in detail how the Petitioner's specific proposed endeavor will help U.S. businesses persevere, how the endeavor has significant potential to employ U.S. workers, or how the endeavor has other substantial positive economic effects. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id.

Here, Professor [redacted] advisory opinion is of little probative value as it does not meaningfully address the Petitioner's proposed endeavor in detail as it concerns national importance. Professor [redacted] does not elaborate on how the Petitioner's proposed endeavor will have prospective impact on the United States, including national or global implications on personal finance and entrepreneurship consulting, the potential to employ U.S. workers, or positive economic effects. His opinion letter is general in nature, concluding that the Petitioner's "expertise in financial management" has national importance. "In determining national importance, the officer's analysis should focus on what the beneficiary will be doing rather than the specific occupational classification." 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual. Professor [redacted] does not provide a substantive analysis of the Petitioner's proposed endeavor.

Further, Professor [redacted] asserts that the Petitioner's personal participation in the IRS's VITA program "impacts a matter that a government entity has described as having national importance or is the subject of national initiatives." However, the Petitioner does not claim that her volunteering with the VITA program will be done on an organizational basis. Moreover, the Petitioner has not explained that volunteering with VITA is a significant element of her proposed endeavor, as compared to establishing a business to serve clients. Professor [redacted] assertion that the Petitioner's prospective volunteering with VITA demonstrates the Petitioner's proposed endeavor's putative national importance is not sufficiently supported by the evidence.

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the Dhanasar framework, she is not eligible for a national interest waiver and further discussion of the second and third prongs would serve no meaningful purpose. Thus, we reserve our decision on the Petitioner's eligibility under *Dhanasar's* second and third prongs. 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 all of the requisite three prongs set forth in 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.

ORDER: The appeal is dismissed.