U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30562551

Date: APR. 26, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an information technology (IT) engineer specializing in cybersecurity, seeks employment-based second preference (EB-2) immigrant 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 the record did not establish that the Petitioner qualified for a 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.

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

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded, in part, that the Petitioner qualified as a member of the professions holding an advanced degree. The record supports that conclusion. The remaining issue to be determined 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.

The Petitioner stated that she intended to operate a business providing cybersecurity services in the United States. The Petitioner initially provided the following in a cover letter concerning the merit and national importance of her proposed endeavor (quoted as written):

> [The Petitioner] looks forward on focusing on this subject that is crucial for U.S. – **Development, consulting, and training services to the private and public sectors pertaining to cybersecurity for Critical Infrastructure Control Systems.** She is uniquely qualified to contribute to U.S. Cybersecurity infrastructure based on her track record of success in the field and will ultimately provide a substantial benefit for Critical Infrastructure Control System within the U.S. either as a Cybersecurity consultant or specialist for private or public needs. [Emphasis in the original.]

The Director concluded the Petitioner did not demonstrate that her proposed endeavor had substantial merit or national importance. Review of the record shows that the Petitioner intended to provide consultancy services to clients in several business sectors in order to strengthen the cybersecurity standing of private and public entities in the United States. As such, we conclude that the Petitioner's endeavor has substantial merit. However, for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework.

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.

[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).

On appeal, the Petitioner submits a brief asserting that the Director erred in his application of *Matter of Katigbak*[2] and his assessment of whether the Petitioner met eligibility requirements. This assertion refers to the Director's determination that the Petitioner's business plan and two letters of support—which were submitted in response to a request for evidence (RFE) and post-date the filing date of the petition—were not relevant since they did not exist as of the date the petition was filed. The Director characterized the documents as a "new set of facts," which "cannot be considered as it relates to the instant petition, since [the documents] were not in existence at the time of filing." The Petitioner's brief provides the following:

> In contrast [to *Katigbak*], [the Petitioner's] case does not involve a reassessment of qualifications or eligibility established at the time of filing, but [is based] on the substantial merit and national importance of [her] proposed endeavor. The business plan and the letters of recommendation submitted are not a "new set of facts" generated post-filing but are rather elucidations and affirmations of preexistent ideas, plans, and achievements related to [her] field of endeavor, adequately introduced and explained at the time of the initial filing.

Review of the record reflects that the cover letter submitted with the Petitioner's initial evidence discussed the importance of cybersecurity within information systems and emphasized the Petitioner's qualifications to provide IT services. The initial evidence did not definitively describe the Petitioner's proposed endeavor, including her role either working for a company, a public entity, or providing services through the operation of her own business. Due to the initial ambiguity of the Petitioner's proposed endeavor, we do not consider the date of the business plan to be a factor in an analysis of her eligibility. Therefore, we will consider the Petitioner's business plan as evidence submitted in support of her proposed endeavor. In addition, we note that while two of the recommendation letters post-date the petition's filing date, they refer to the Petitioner's experience prior to the filing date; as such, they may be considered.

Further, the business plan is supported by industry reports and news articles discussing the significance of managing and improving cybersecurity and the U.S. jobs market. While this material provides information about the Petitioner's intended field of endeavor, neither this documentation, the Petitioner's business plan, nor the letters of support sufficiently demonstrate how the Petitioner's plan to operate a cybersecurity consultancy company will have a potential prospective impact of national importance.

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." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted 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.* 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. Further, to

[2] *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg'l Comm'r 1971) (stating that individuals seeking employment-based immigration classifications must possess the necessary qualifications as of the filing date of the visa petition).

evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. 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.

On appeal, the Petitioner asserts that the submitted evidence establishes the national importance of her proposed endeavor. The cover letter provided in response to the RFE provided the following:

> [The] Petitioner's proposed endeavor in the field of cybersecurity has significant global and national economic implications. As the world becomes more technologically interdependent and interconnected, the significance of cybersecurity cannot be exaggerated.

The Petitioner's business plan describes the services that she plans to provide through her consultancy business as follows (quoted as written):

> The service provides information, evaluation, detection, prevention, as well as tools to ensure confidentiality, integrity of information and availability through official digital applications for its managements.
>
> The customers, as well as their own customers, if applicable, will have control of the information they store in their system and ensure attacks by vulnerability, which can cause an App to stop working temporarily or permanently.
>
> [The company's] value acquires greater weight due to the experience in the area of diagnosis and design in the proposal of appropriate solutions according to each case, being able to coordinate the proposal presented so that the solutions achieve their effectiveness or so that the client can apply them properly on their own.

As a preliminary matter, we observe that both the business plan and letters of support emphasize the Petitioner's experience and how her expertise will directly benefit the company. We note that evidence of the Petitioner's job experience and performance generally relates not to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second.[3]

While the business plan offers an overview of the services the Petitioner intends to provide, its argument for the national importance of the Petitioner's endeavor relies on the overall importance of

[3] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision. We note that the record does not include—and the Petitioner does not reference—experience forming or operating a business, nor does any of the evidence of record contemplate funding to finance the business. A lack of experience previously engaging in a business venture and the absence of financial resources to operate the business are relevant to whether the Petitioner's proposed endeavor can credibly be undertaken or carried out within a realistic timeframe that will benefit the United States. These considerations are essential to an assessment of the proposed endeavor's potential prospective impact. While the ultimate goal of a proposed endeavor may, for example, enhance societal welfare, we must consider the endeavor's significant potential to prospectively do so. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

robust cybersecurity practices in a technologically dependent world. The Petitioner has not provided independent evidence or otherwise explained how her company would have a prospective national impact on the field of cybersecurity or an economy of any scale. For example, the business plan anticipates hiring 29 individuals by the conclusion of its second quarter of operation and generating a net revenue of $111,272.00. The plan does not, however, provide the origins of these calculations, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is likely the company will have a positive national impact economically or within the field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, she has not shown that her business stands to provide substantial economic benefits to any particular locality or to the United States overall. While the business plan explained in general terms that her company's services would help other companies succeed, and in turn benefit the U.S. economy, that reasoning was not based on any objective evidence related to her specific proposed endeavor. As such, the business plan does not demonstrate that the prospective benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

It is not clear how a business of the size and scope described in the business plan would positively impact a given region in which either her employees or clients are located. The Petitioner has not provided evidence to show that she would employ a significant population of workers in a particular region, nor has she shown that her proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue. Neither the business plan nor the remaining evidence in the record demonstrate that the Petitioner's endeavor to operate a consultancy company rises to the level of national importance. The Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.