U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185337

Date: APR. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability in the arts, sciences, or business. *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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

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).

[1] Because the Director found the Petitioner eligible for classification as a member of the professions possessing an advanced degree, the decision did not evaluate the Petitioner's alternative claim that she also qualifies for EB-2 classification as an individual of exceptional ability.

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,[2] 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. [3]

II. ANALYSIS

The Petitioner earned a bachelor's degree in law from a Brazilian university in 2014 and later completed a one-year program in labor law at a different Brazilian university. According to the Petitioner's résumé, after earning her bachelor's degree she was employed as an associate in labor law with [redacted] until 2019. The Petitioner entered the United States in April 2019 as an F-1 student and filed this petition in June 2022.

As stated, the Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree under 203(b)(2)(A) of the Act.[4] Therefore, the sole issue on appeal is whether the Petitioner meets the requirements of the three prongs of the *Dhanasar* analytical framework and otherwise merits a national interest waiver as a matter of discretion. In denying the petition, the Director addressed all three prongs of the *Dhanasar* analytical framework and concluded that the Petitioner only established her eligibility under the second prong.[5] On appeal, the Petitioner

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[2] *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 is discretionary in nature).

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

[4] The Director did not discuss the basis of Petitioner's eligibility for the requested EB-2 classification in the notice of decision. However, the Director concluded in a request for evidence (RFE) issued on November 23, 2022, that the Petitioner had met her burden to demonstrate that she "meets USCIS' classification of a member of the professions holding an advanced degree."

[5] Because we agree with the Director's conclusion regarding the Petitioner's eligibility for a national interest waiver, we reserve the issue of her eligibility for the underlying EB-2 immigrant classification. *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). We note that the record indicates the Petitioner completed less than five years of post-baccalaureate work experience prior to the filing of her petition in June 2022. The submitted credentials evaluation concludes that she attained the foreign equivalent of a U.S. bachelor's degree in legal studies in 2014, and her diploma reflects that she completed that degree in December 2014. The submitted Part B of Form ETA 750, Application for Alien Employment Certification, and other evidence in the record, indicates her most recent employment as a lawyer with [redacted] ended in March 2019 in Brazil. Therefore, the record does not sufficiently document the Petitioner's five years of progressive post-baccalaureate experience, as required by 8 C.F.R. § 204.5(k)(3)(i)(B).

asserts that she submitted evidence sufficient to establish eligibility, and that, by failing to give that evidence sufficient weight, the Director imposed an improperly strict standard of proof.

For the reasons provided below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. Proposed Endeavor

At the time of filing, the Petitioner's letter indicated her intention "to practice law in international corporations or immigration law firms who deal with Latin American/Hispanic/Portuguese clients." She further explained:

> Given my technical skills, I will help large business organizations in dealing with international legal matters. I will provide my knowledge and skills in the area of business and labor law to U.S. companies, including those who wish to expand their business to international markets in Latin America. I will also provide legal advisory services to U.S. businesses and [have] the capacity to assist Latin American businesses planning to market in the U.S. through import/export and to those who want to establish a physical business location in the United States. I will offer a high level of practical experience and a more professional route to enter new markets.

In response to an RFE, the Petitioner submitted a "Business Plan" for her "International Business Consulting and Contracts Company," which will offer "a wide range of advisory services based on national, tax, and international trade contracts." The Petitioner would serve as the company's "Chief Executive Officer (CEO) and Lead Law Consultant," and it would focus on clients requiring advice on the legal and business environment in Brazil and Latin America. The company will start its operations in [redacted] Florida and expand, in its third through fifth years, to Texas, [redacted] and [redacted] respectively.

The business plan includes industry and market analyses, business strategies, financial forecasts and projections, and a description of the company's proposed service offerings and personnel. With respect to future staffing, the business plan projects that the Petitioner's new firm would hire 30 employees in the first five years of operations, create 62 indirect jobs, pay over $304,593 in total taxes, and achieve total sales of $374,400 in its first year and $2.144 million by its fifth year. In a section titled "[The Petitioner's] National-level Impact," the business plan states that the firm's contributions will include improving the financial results of client companies by attracting foreign investment. In addition, the company is forecasted "to increase profits in the coming years, thus increasing the amount of income taxes paid to federal and state governments."

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, 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 concluded that the Petitioner established the substantial merit of the proposed endeavor. However, for the reasons discussed below, the Director determined, and we agree, that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework. [6]

In support of her claim that she can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner referenced recommendation letters from colleagues. She also provided copies of articles from business, industry, and government publications on the topics of the legal profession, the legal services market and industry in the United States, and the demand for skilled professionals in this field. A 2021 IBISWorld Industry Report regarding "Law Firms in the United States" indicates that demand for legal services will increase with "strengthening business activity and corporate profit." In addition, the Petitioner provided articles and reports discussing the value of immigrants and immigrant entrepreneurs as drivers of U.S. new business growth. The record also contains information about U.S.-Brazil economic and trade relations, the financial- and tax-related complexities of doing business in Brazil and Latin America, and the economic benefits of international trade and foreign investment in the United States. The Director concluded that this evidence supports the Petitioner's claim that her proposed work as a business owner and CEO in the international business and legal consulting services sector has substantial merit.

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. Although the submitted business plan reflects that the Petitioner's company will hire up to 30 additional workers over five years, the business plan does not explain how the company's projected total sales were calculated. The record, similarly, lacks supporting evidence demonstrating that the projected sales in the business plan present a realistic basis for employment creation predictions. Here, the Petitioner has not established the economic impact of her proposed endeavor by a preponderance of the evidence. *See Chawathe*, 25 I&N Dec. at 375-76. In addition, the record does not contain sufficient evidence to demonstrate that the areas where it will operate are economically depressed, that it would employ a significant population of workers in those areas, or that the specific proposed endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue.

The Petitioner also submitted industry reports relating to the U.S. law firm and legal services markets which mention an increasing demand for experienced legal professionals. However, she has not shown that the areas where she proposed to open offices are underserved with respect to legal services,

[6] While we may not discuss every document submitted, we have reviewed and considered each one.

and the record does not establish that her firm's projected $2.144 million in revenue has the potential to have a significant economic or other impact on the legal services industry, which according to a submitted 2020 IBISWorld Industry Report publication is expected to increase at an annualized rate of 2.2% to 331.4 billion.

The Petitioner further maintains that her proposed endeavor has "national importance" within the field, noting that she will boost the U.S. economy and the amount of capital in the U.S. market by facilitating cross-border transactions through foreign investment and assisting U.S. companies interested in investing abroad. Although the Petitioner's statements reflect her intention to provide valuable legal and business-related services for corporate and individual clients, she has not offered sufficient information and evidence to demonstrate that the potential prospective impact of her proposed endeavor rises to the level of national importance.

While the Petitioner contends that her proposed endeavor will create cross-border financial initiatives between the U.S., Brazil, and Latin America, she has not shown, for example, that the prospective impact of the legal and business services performed by her firm would represent a significant share of the legal or business services market or offer projections on the amount of foreign investment likely to be generated. The burden is on the Petitioner to establish that the economic effects of her proposed endeavor are "substantial." As such, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*.

Moreover, in her personal statements and appellate brief, the Petitioner has placed considerable emphasis on her academic qualifications in labor and business law and her knowledge of both Brazilian and U.S. law and business environments. The record contains supporting documentation of her educational and employment experience including letters from her colleagues. While important, the Petitioner's expertise acquired through her academic and professional career relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner's past achievements, just as it cannot be inferred based on general claims about the importance of a given field or industry.

We also acknowledge that the Petitioner provided an expert opinion letter from a professor at [redacted] In addressing the first prong of the *Dhanasar* framework, the author describes Brazil's trade relations and explains the current market challenges for foreign companies doing business in Brazil. She states that U.S. companies doing business or planning to do business in Brazil would "benefit from [the Petitioner's] expertise as a Legal Consultant, with an intimate and first-hand knowledge of the Brazilian legal arena." The professor concludes that the Petitioner's work would be "of substantial merit and national importance for the United States." However, she does not address the Petitioner's business plan, the specific proposed endeavor and its prospective substantial economic impact, nor does she address the implications of the proposed endeavor on the larger field of legal and business consulting services. Rather, much of the letter's discussion of the first prong of the *Dhanasar* analysis provides background information about Brazil's business environment and mentions the projected growth of law firm industry revenue.

We observe that 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 foreign national'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 letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

For 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

The Petitioner has not established that she can satisfy the first prong of the *Dhanasar* analytical framework applicable to national interest waiver petitions. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of whether the Petitioner has met the second and third prongs of the *Dhanasar* analytical framework and merits a national interest waiver as a matter of discretion. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

As the Petitioner has not established that she meets the first prong of the *Dhanasar* framework, we conclude that she has not established she is eligible for a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.