U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32371282

Date: AUG. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business strategist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 she is an individual of exceptional ability, that the proposed endeavor was of national importance, the Petitioner is well positioned to advance the endeavor, or that it would be beneficial to waive the requirements of a job offer. 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 sustain the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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,[3] 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.

Id.

II. ANALYSIS

The Petitioner claimed eligibility for the EB-2 immigrant classification as an individual of exceptional ability. However, because we conclude that she is not eligible for, and does not merit as a matter of discretion, a national interest waiver, and this determination is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of her eligibility as an individual of exceptional ability. *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).

The remaining issue to be determined 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 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. 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

[3] *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 is discretionary in nature).

Regarding her claim of eligibility under *Dhanasar's* first prong, the appeal brief states that the Petitioner intends to act as a business strategist for clients. The brief contends that the Petitioner's endeavor will have "profound implications in enhancing and sustaining economic growth, promoting innovation, reducing inequalities, and fostering strong, transparent, and accountable institutions, both at the national and potentially global levels." The evidence provided does not demonstrate that this specific endeavor is 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. 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. 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. 26 I&N Dec. at 893.

The Petitioner will work as a business specialist. The Petitioner's professional plan submitted in response to the request for evidence (RFE) states that the Petitioner will provide services in accounting, finance, taxation, and business management. Her professional statement further illustrates that she intends to develop comprehensive financial management systems for clients, provide financial planning, fraud identification, tax planning services, and training for accounting and finance professionals. She also intends to offer a comprehensive research and development service through collaborative research with academic institutions, professional associations, and industry experts. The Petitioner has not explained logistically how she would act in these various and wide-ranging capacities for several clients. Anyone seeking this waiver must identify "the specific endeavor" that they propose to undertake. *Dhanasar*, 26 I&N Dec. at 889; see generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policymanual ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation.").

Here, the Petitioner has not described how her employment as a business specialist will have a broader impact on the field beyond the individual clients she intends to partner with. The appeal brief argues that by improving businesses through her strategies and anti-fraud monitoring system, her endeavor will improve societal welfare, foster "an environment that is resilient to fraud and corruption," and play a "crucial role in establishing peace and justice." The Petitioner asserts that because her business will have these wide-ranging impacts, her endeavor is nationally important. Yet the brief neglects to supply explanations to uphold these conclusory statements as it does not illustrate how providing financial business consulting services to individual companies will have these far-ranging impacts as claimed. Contentions require support to underpin them, as assertions themselves do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

The brief further avers that as her work will impact subjects of national initiatives, such as the prevention of money laundering, small businesses, and the securities industry, it is nationally important. However, these arguments ignore the requirements we set forth in *Dhanasar*. It is not the importance of the field that determines an endeavor's national importance, but rather how the specific endeavor will impact the field on a level commensurate with national importance. *See Dhanasar*, 26 I&N Dec. at 889.

Moreover, she 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. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Dhanasar*, 26 I&N Dec. at 890. In the appeal brief, the Petitioner contends that her endeavor "presents a remarkable potential for creating employment opportunities and generating positive economic effects in the U.S." To support these arguments, the brief points to the various ways the Petitioner will improve her clients' businesses. Additionally, the brief contends that the proposed endeavor will reduce inequalities by aiding economically distressed communities through its services to small businesses. Nonetheless, the Petitioner again does not provide an explanation as to how her work with individual companies would have substantial positive economic effects on the level of national importance. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The record does not sufficiently demonstrate national importance either.[4] The Petitioner provided a few letters of recommendations[5] that maintain that the Petitioner's endeavor will have an important economic impact, but do not specify how the Petitioner's services to individual clients will have this claimed economic impact. For example, one letter describes that the Petitioner's work is "essential for the sustainable growth of the economy," yet it does not illuminate how the Petitioner's individual assistance to her clients will scale to have such an economic impact. Another letter details the Petitioner's work in developing an anti-fraud tax software, averring that this project "is set to redefine the fight against fraud in the U.S." Nevertheless, the letter does not explain how the fraud tool in question would have such impact. Contentions require support to underpin them, as assertions themselves do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. at 51. The Petitioner's personal statement describes her anti-fraud monitoring system and how she intends to use it "to eliminate financial losses due to disorganization, and to prevent and solve cases of corruption" within her clients' companies. The record does not establish that the software would be used beyond her clientele.

The Petitioner also provided a letter from Dr. [redacted] a professor at [redacted] As a matter of discretion, we may use opinion statements submitted by a

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

[5] The Petitioner also presented her resume, past salary records, other letters of recommendations attesting to her skills, association memberships, work history documentation, educational certificates, and other educational history documentation. Nevertheless, the Petitioner does not explain how this evidence is relevant to national importance as it points to the Petitioner's past accomplishments, training, and experiences, not the specific endeavor's potential impact in business field. Generally, this type of evidence is more appropriate for the second prong when determining if the petitioner is well-positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890.

petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nonetheless, 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 the advisory opinion is of little probative value as Dr. [redacted] evaluation of national importance focuses on Brazilian investment in the United States and the importance of small businesses. Dr. [redacted] concludes that because the Petitioner's endeavor supports these subjects of national importance, her endeavor is also one of national importance. As noted above, it is not the importance of the field that determines an endeavor's national importance, but how the specific endeavor will impact the field on a level commensurate with national importance. *See Dhanasar*, 26 I&N Dec. at 889. From the evidence provided, the Petitioner has not established that her proposed endeavor will have a national impact on the business field.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that the Petitioner's proposed endeavor will sufficiently extend beyond her clients to affect the region or nation more broadly. 26 I&N Dec. at 893. She has not shown that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and the Petitioner has not demonstrated eligibility for a national interest waiver. As 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 Bagamasbad*, 429 U.S. at 25 (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. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find 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.