U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33060139

Date: AUG. 07, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 the Petitioner's eligibility for the requested national interest wavier. 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 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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).

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,[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.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualified as an advanced degree professional, but further concluded she did not establish eligibility for a national interest waiver under the *Dhanasar* framework. 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. National Interest Waiver

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.* 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

The record reflects that the Petitioner planned to own and operate her own digital marketing and mobile application consultancy company in the United States. Specifically, the Petitioner intended to offer consulting services in digital marketing, social media, and social networking "for the creation and reformulation of marketing and sales strategies for [her customers'] products and services, developing solutions and customized projects [to] enable them to obtain better financial results and boost their businesses." In addition to digital marketing solutions, she planned to offer application development services ranging from assisting with customization of existing applications to developing new applications to serve a variety of business needs. According to Petitioner's proposal and her company's business plan, the Petititioner's planned services relating to digital marketing consulting

[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 is discretionary in nature).

and social media included marketing strategy; brand creation or re-branding; content planning; project management; search engine optimization (SEO); pay-per-click (PPC) services; as well as analysis and evaluations of marketing plans. Additionally, the company would develop mobile applications; mobile application testing, provide mobile application development consultancy with initial assessment and initial design services; and mobile application integration services. While the Petitioner intended to begin operations with one office in the central Florida region office, she planned to open three additional offices within the five years.

In support of her endeavor, the Petitioner submitted a personal professional plan, a business plan, letters of recommendation from colleagues and former clients attesting to the Petitioner's business acumen and success in the field, an expert opinion letter, and various articles and industry reports discussing multiple federal initiatives aimed at promoting and developing small and medium-sized businesses, and the impact of these businesses to regional and national economies.[2]

Upon review of the complete record, the Director concluded that the Petitioner had established the substantial merit of her endeavor but did not establish its national importance. Specifically, the Director determined that although the record showed the importance of her field, it did not show the Petitioner's endeavor would result in broader implications to her field or offer benefits that extended beyond her company and its customers. Additionally, the Director concluded that the Petitioner had not shown her endeavor had a significant potential to employ U.S. workers or otherwise provide substantial economic benefits either to a region or nationally.

On appeal, the Petitioner generally asserts the Director erred in their review of the evidence and that the decision is "contrary to law or policy and unsupported by the evidence on record." However, the Petitioner does not point to specific examples of how the Director erred in their analysis or otherwise explain how the decision is contrary to law or policy. Instead, she submits the same claims and evidence previously submitted in response to the Director's request for evidence (RFE) without addressing the Director's conclusions in their decision. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding.[3] By presenting only general disagreement with the Director's decision, without identifying the specific aspects of the denial she considers to be incorrect, the Petitioner has failed to sufficiently identify the basis for her appeal.[4] This alone is grounds for dismissal. Nevertheless, for the reasons discussed below, we agree with the Director that although the Petitioner established the substantial merit of her endeavor, she did not demonstrate its national importance under the first prong of the *Dhanasar* analytical framework, and therefore we must dismiss the appeal.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.
[3] *See* 8 C.F.R. § 103.3(a)(1)(v).
[4] *Matter of Valencia*, 19 I&N Dec. 354, 354–55 (BIA 1986).

a de novo review of the record, we disagree with the Petitioner's claims that the Director erred in their evaluation of the evidence.

The Petitioner claims her endeavor is in the national interest because it impacts a matter that a government entity has described as having a national interest, has national or even global implications within her field, and has significant potential to employ U.S. workers or other substantial economic benefits. We disagree.

On appeal, the Petitioner primarily relies on the importance of the marketing field as well as governmental interest in the success of small and medium-sized businesses to establish the national importance of her endeavor yet she does not address the Director's conclusion regarding the limited implications of her company. Specifically, she reasons that, because the federal government recognizes the significance of developing small and medium-sized businesses, and her business is both a small business and will serve small and medium-sized businesses, her proposed endeavor targeting these enterprises is of national importance. However, when considering the national importance of a proposed endeavor, the industry or customer base a petitioner will serve alone is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889.

Similarly, the Petitioner has not shown the broader implications of her proposed endeavor, however admirable in helping companies to succeed, rise to the level of national importance. On appeal the Petitioner posits that her endeavor will have national or global implications because she will improve marketing campaigns for small and medium-sized business, which, in turn, will expand their customer outreach and brand visibility. Additionally, by providing application development services to companies, she will help her customers to improve their efficiency and competitiveness. Yet, despite the Petitioner's assertions on appeal, the record does not establish that these benefits, even if realized by her customers, would result in broader implications to her 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 the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's clients, like the offerings outlined in her business plan, would not have broader implications in the field. *See Dhanasar* at 893.

And, while we recognize that the Petitioner has had a successful career operating her company abroad and successfully developed application solutions to assist her customers' business operations, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor. Likewise, the testimonial evidence in the record, such as the recommendation letters, and expert opinion letter do not analyze the Petitioner's specific proposed endeavor or offer evidence of its impact, beyond commenting on her expertise or the importance of the field. For those reasons, this evidence is not probative on the national importance of her endeavor.

Additionally, we agree with the Director's conclusion that the Petitioner did not establish that her endeavor will result in the economic benefits contemplated in *Dhanasar*. *See id.* Although any basic

economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her proposed endeavor would rise to the level of national importance. On appeal, she claims that by her company's fifth year of operations, it will directly employ 42 employees, resulting in a total payroll cost of $3,931,177 and the creation of 180 indirect jobs. Additionally, the Petitioner indicated that by the fifth year of operations she anticipates her company's gross revenue will be $6,388,183 with an annual tax payment of $1,141,280. While we recognize the Petitioner provided these employment and revenue projections in her business plan, the plan provides no explanation for the basis of these projections. Yet, even if the endeavor's revenue and job creation projections were sufficiently corroborated, they do not establish that the endeavor would operate on a scale rising to the level of national importance, as the Petitioner has not explained how these proposed employment numbers and revenue will impact the area of intended operations.

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.

B. Eligibility for the Underlying Classification

While the appeal must be dismissed as the Petitioner has not satisfied prong one of the *Dhanasar* framework, upon a de novo review of the record, we must withdraw the Director's determination that the Petitioner is an advanced degree professional. The record indicates that, after three-and-a-half years of study, the Petitioner earned a Brazilian bachelor's degree in administration. As confirmed by the provided evaluation, the Petitioner's Brazilian bachelor's degree in administration is the equivalent of "three and one half years of [b]achelor's-level study at an accredited institution of higher learning in the United States." The Petitioner then subsequently obtained a Brazilian bachelor's of science in accounting in 2019 after completing two years of study. Based on the combination of these two degrees, the evaluator concluded that the Petitioner "attained the equivalent of a [b]achelor's [d]egree in [b]usiness [a]dministration."

However, while the Petitioner may hold the "equivalent of a [b]achelor's degree," the record does not establish she attained a single-source "foreign equivalent degree" as required by 8 C.F.R. § 204.5(k)(2).[5] We cannot conclude that she qualifies as an advanced degree professional with anything less than a single-source "United States bachelor's degree or foreign equivalent." Moreover, we note that the Petitioner completed her bachelor of science in accounting in August 2019 and submitted her petition in November 2022. As such, even if we were to agree with the Director's conclusion that the Petitioner had obtained a single-source foreign equivalent degree based on her education completed in 2019, we nonetheless would withdraw the Director's determination that the Petitioner is an advanced degree professional as the Petitioner did not acquire five-years of progressive, post-degree experience prior to filing this petition. *See* 8 C.F.R. § 204.5(k)(2).

[5] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") Where combinations of education or experience may equate to baccalaureate degrees, the Act and regulations state so explicitly. *See* section 214(i)(2)(C) of the Act, 8 U.S.C. § 1184(i)(2)(C) (allowing H-1B workers to have "experience in the specialty equivalent to the completion of such [bachelor's] degree"); *see also* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) (stating H-1B workers may have "education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate . . . degree"). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

Nevertheless, as the resolution of the issues pertaining to the Petitioner's eligibility for the requested national interest waiver under the first prong of the *Dhanasar* analytical framework is dispositive of this appeal, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category[6], as well as her asserted eligibility under *Dhanasar*'s second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of 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, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

[6] That said, the Petitioner should be prepared to address this issue in any future filings requesting EB-2 immigrant classification as an advanced degree professional.