U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32829278

Date: AUG. 7, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, National Interest Waiver)

The Petitioner, a public relations consultant who seeks to provide public relations consulting services, 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 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. 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 qualify for a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification at section 203(b)(2)(A) of the Act, 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." 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 qualifies for EB-2 immigrant classification. However, the Director denied the Petitioner's national interest waiver request, concluding that she had not established the national importance of her proposed endeavor under the first prong of *Dhanasar*, that she is well position to advance the proposed endeavor under the second prong, and 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, as required under third prong.

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. Here, however, the Petitioner has provided contradictory evidence regarding the nature of the proposed endeavor as an initial matter; therefore, it is not possible to conclude that the Petitioner will be engaged in a proposed endeavor that meets the first prong of the *Dhanasar* framework.

On the NIW petition and in her accompanying statements, the Petitioner asserted that she has had a prominent career in public relations in Brazil and that her proposed endeavor is to provide public relations consulting and communications advice to established enterprises or startup companies in the United States through her public relations organization. The Petitioner stated that public relations professionals are needed to assist the growth of small and established U.S. businesses, especially in the aftermath of the COVID-19 pandemic. The Petitioner indicated that she has already organized an entity named O-G- LLC in Florida through which she will accomplish her public relations endeavor, and that O-G- LLC is already generating income based on her work as a public relations consultant in Florida. The Petitioner provided a 2022 Internal Revenue Service (IRS) Form 1065, U.S. Return of Partnership Income, showing that O-G- LLC had gross receipts or sales of $247,932 in that year. According to the Petitioner, she and her husband also founded an organization in Florida named I-D- LLC, for the purposes of promoting real estate development, and that she serves as the organization's public relations manager. She included a May 2023 letter from an individual named A-P-, who stated that he had collaborated with the Petitioner on a real estate investment opportunity in Florida through his organization, G- LLC (elsewhere described as G-H- LLC), and the Petitioner's organization named I-D- LLC and found the Petitioner to be "an excellent sales professional who demonstrated in-depth knowledge of the U.S. real estate market, including trends, regulations, buying and selling processes, real estate financing and investment analysis."

[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).

With respect to her claim that she will engage in a proposed endeavor that has substantial merit, the Petitioner provided articles discussing the critical role of public relations work. For example, the articles state that public relations work promotes the visibility of a company, thereby allowing it to "expand economic growth" in the United States or globally, and that it also ensures consumers can make informed decisions on the brands they support thereby creating further interest and growth in those brands. The Petitioner included a 2023 U.S. Chamber of Commerce article on worker shortages in the United States, and an article on the impact of the COVID-19 pandemic on small businesses. Additionally, the Petitioner provided news articles on the importance of public relations work for new businesses as well as for any business during a recession, seeking to establish the need for public relations professionals as a general matter. Based on these claims, the Director's determined that the Petitioner's proposed work as a public relations consultant who intends to help other companies and consumers has substantial merit. However, as stated, the Director concluded that the Petitioner's evidence did not establish the national importance of the proposed endeavor.

The Petitioner maintains on appeal that she established the national importance of her proposed endeavor as a public relations consultant by a preponderance of the evidence and that the Director failed to fully assess all of the previously provided evidence, citing to *Matter of Buletini*, 850 F. Supp. 1222, 1223 (E.D. Mich. 1994) (finding that failure to consider all of the relevant evidence is an abuse of discretion). In her appeal brief, the Petitioner emphasizes that her business plan shows that she will be the CEO of a public relations organization in Florida, and that it will eventually generate 26 direct and 98 indirect jobs.

Upon review, we adopt and affirm the Director's decision as it relates to national importance under prong one of the *Dhanasar* analysis. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Contrary to the Petitioner's assertions on appeal, the Director properly reviewed and analyzed the Petitioner's national importance claims and the relevant evidence under the first prong of *Dhanasar*, including her business plan and employment creation assertions, and discussed their deficiencies.[2]

Here, the Petitioner must establish the national importance of her proposed endeavor rather than the importance of public relations work, small businesses, entrepreneurism, and immigration. The relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Further, "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.* Also, "[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.

[2] The Director concluded the Petitioner established the substantial merit of her proposed endeavor.

Upon review of the record, we agree with the Director that the Petitioner has not established her proposed endeavor of providing public relations consulting services sufficiently extends beyond her company and its clientele to impact the industry or the field more broadly, at a level commensurate with national importance. In *Dhanasar*, we determined 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. Moreover, although the Petitioner emphasizes on appeal that her company will generate 26 direct and 98 indirect jobs, she also did not demonstrate how her claimed employment and revenue projections, even if credible, will have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. *Id.* at 890.

For the above reasons, the Petitioner did not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision; therefore, she has not demonstrated eligibility for a national interest waiver, as a matter of discretion. This determination is dispositive of the appeal, and further analysis of her appeal arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *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 alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.