U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28354987

Date: AUG. 15, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a marketing professional, 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 Nebraska Service Center denied the petition, concluding that though the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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 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. 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;

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, 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 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.

According to the Petitioner's statement provided with the initial filing, she intends to work as a marketing manager in the "Business Development and Customer Life Cycle Management field" and she will create an investment and property management "digital platform that will connect investors, brokers, property management, and maintenance contractors with qualified opportunities in a one-stop shop format." The Petitioner indicates that the "hub is designed for international and local investors and homeowners who would analyze qualified Real Estate opportunities and use the platform to make acquisition deals and hire services to maintain and control their investments, resulting in low rental loss, affordable housing, higher profitability and reduction of housing cost for rentals to tenants." The Petitioner stated on page four of the petition that her proposed employment is "marketing manager" and she will "[p]lan, direct, or coordinate marketing policies and programs, such as determining the demand for products and services offered by a firm and its competitors."

The cover letter provided with the initial filing states that the Petitioner intends to "continue her career by working as a Marketing Manager, developing marketing plans for U.S. companies to bolster market positions domestically and internationally, effectively brand products and services, and increase profits" and further indicates that the Petitioner's "endeavor will enable U.S. businesses to strategically invest in marketing in demographically diverse markets at home and culturally diverse markets abroad." The submitted expert opinion letter refers to the Petitioner's proposed endeavor of "applying her expertise to seize market and investment opportunities for U.S. companies doing business abroad, as well as enhance the strategic, marketing, and sales management capabilities and therefore competitiveness of U.S. companies in Brazil." The business plan indicates the Petitioner established a company in Florida, she is the chief executive officer, and her company will create a property management and investment digital platform to connect homeowners, brokers, property managers, and maintenance contractors. The Petitioner also submitted industry articles and reports and recommendation letters in support of her eligibility.

The Director determined, in part, that the Petitioner did not provide a detailed description of her proposed endeavor in the initial filing and therefore did not demonstrate the proposed endeavor's

substantial merit or national importance. The Director issued a request for evidence and in response, the Petitioner indicated that she plans to continue her career in the United States as a marketing manager and will utilize her marketing skills to promote products and advertise services of companies that will achieve significant cross-border sales for U.S. companies looking to grow abroad, as well as foreign companies looking to move and grow in the United States. The Petitioner stated that she "will soon be contributing to the United States' advertising and hospitality sectors, namely by using her expertise in providing marketing services, identifying strategies, and performing market research, which are applicable to a variety of industries." The Petitioner also referred to the previously submitted business plan that details how her Florida-based company will develop an investment and property management digital platform and impact the "construction, housing, marketing, and tourism industries with an expected total payment of wages" of approximately $22,925,040 and 116 employees by the fifth year of operation.

In denying the petition, the Director noted the varying descriptions of the Petitioner's proposed endeavor as reflected in the submitted evidence. The Director concluded that because the Petitioner did not provide a clear, detailed description of her proposed endeavor, a meaningful determination cannot be made regarding whether the proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework. On appeal, the Petitioner claims that the Director erred by requiring a stricter standard of proof than preponderance of evidence, imposing novel substantive and evidentiary requirements, and failing to fully consider the submitted resume, business plan, recommendation letters, and industry articles and reports. The Petitioner reiterates her past achievements and argues the submitted evidence establishes her proposed endeavor has substantial merit and national importance.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their 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.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director thoroughly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether she had demonstrated, by a preponderance of the evidence, that she meets the first prong of the *Dhanasar* framework.

Upon review, the record supports the Director's determination that the Petitioner has not provided a detailed description of her proposed endeavor, such that USCIS can make a meaningful determination of whether the proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework. The Petitioner on appeal indicates she intends to continue her career in the United States as a marketing manager and her proposed endeavor is a vital aspect of U.S. marketing operations and productivity. She also refers to her Florida company and her plans to develop the investment and property management digital platform. The Petitioner asserts that the record proves her proposed endeavor will have multiple, positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation and contributing to a streamlined economic landscape.

Without detailed, consistent information about her specific proposed endeavor, the Petitioner has not established that her proposed work in the United States will have substantial merit and national

importance. In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance under *Dhanasar*'s first prong. It is the Petitioner's burden to prove by a preponderance of evidence that she is qualified for the benefit sought. The Petitioner has not done so here.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of 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 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.