U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 32768073

Date: AUG. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a product administrative support coordinator in finance, 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 the record did not establish 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

The Petitioner proposed to develop and serve as general and operations manager for [redacted] a financial and banking consulting firm specializing in providing services to the credit union industry. The Petitioner plans to provide its clients "financial, banking, management and investments consulting and advisory services." The Petitioner believes her academic degrees and practical experience in credit union and financial management equip her for this endeavor.

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. 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. *Id.*

The Director determined the Petitioner's proposed endeavor has substantial merit but does not rise to the level of national importance. The Director found the evidence of record insufficient to support the financial and employment projections in the Petitioner's business plan. The Director also found the Petitioner had not demonstrated the economic activity generated by her proposed endeavor would rise to the level of substantial positive economic effects for the regional or national economy. Finally, the Director determined the Petitioner did not demonstrate her proposed endeavor would have broader implications, extending beyond her own company and clientele, and at a level commensurate with national importance.

On appeal, the Petitioner contests the Director's analysis of the record, contending a stricter standard of proof was applied to her case than the appropriate preponderance of the evidence standard. The Petitioner claims she met the requirements of a national interest waiver and asserts the Director did not give due regard to her submitted resume, business plan, evidence of contributions in the field, letters of recommendations, and industry reports and articles. However, the Petitioner has not articulated on appeal how the Director specifically failed to give proper weight to the evidence, and our review reflects that the Director considered the relevant evidence under the appropriate preponderance of the evidence standard. The Petitioner submits a brief on appeal, relies upon previously submitted evidence, and asserts she has demonstrated the broader implications of her endeavor and its substantial positive economic effects, including employment and economic activity and consequently, established the national importance of her endeavor.

We adopt and affirm the Director's decision and analysis of the first prong of the *Dhanasar* framework. *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 the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Martinez-Lopez v. Barr*, 943 F.3d 766, 769 (5th Cir. 2019) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Petitioner did not agree with the Director's evaluation of her evidence and asserts she met the requirements of *Dhanasar*. However, the Director explicitly

considered the Petitioner's resume, business plan, evidence of contribution in the field, letters of recommendation, and industry reports and articles in their decision; and we see no error in the Director's determination that the relevant evidence did not establish the national importance of the Petitioner's proposed endeavor, as contemplated under prong one of the *Dhanasar* framework.

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our determination of her eligibility under the second and third prongs of the *Dhanasar* framework. On appeal, the Petitioner cites to *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994), in asserting the Director's similar declination to reach the second and third prongs of the *Dhanasar* framework undermines a comprehensive evaluation of her contributions and infringes on her due process rights. However, the Board of Immigration Appeals, in *Matter of M-P-*, found they were unable to meaningfully review an immigration judge's motion denial when no explanation was provided for the decision. Here, the Director issued a denial decision and clearly articulated the basis for the denial. As such, the Petitioner has not demonstrated the Director erred in declining to reach the additional *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (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. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

**ORDER:** The appeal is dismissed.