U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32462126

Date: AUG. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a Human Resources professional and Entrepreneur, 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 record did not establish that the petitioner merits a discretionary waiver of the job offer and labor certification requirements for EB-2 classification. 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:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 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, a citizen and national of Brazil, seeks a waiver of the job offer and labor certification requirements of EB-2 classification based on her proposed endeavor of offering her expertise as an entrepreneur in the field of human resources (HR). The Director determined that the Petitioner qualified as a professional with an advanced degree, so the sole issue on appeal is whether the Petitioner has established eligibility for a waiver in the exercise of discretion.

A. The Proposed Endeavor

The Petitioner proposes to create [redacted] a human resources consultancy organization, in [redacted] Florida. The business plan provided to the Director indicates she intends to leverage her experience as a HR professional to create her own company providing consulting services to small and medium organizations. Specifically, she states:

> All in all, [redacted] will support human resources processes in U.S. corporations with special attention to retention and engagement. The company will seek fast and consistent results, making it stand out in the American market and establish itself quickly and effectively, strengthening the American economy and generating direct and indirect jobs for American workers.
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> In this way, in terms of locale, the business is to be located across HUBZone areas, which are part of a United States Business Administration program for small companies that operate and employ people in historically underutilized business zones. The aim is to generate jobs for U.S. workers in these underserved areas, while at the same time offering them opportunities to build up and expand their professional possibilities. This will improve wages and working conditions for American citizens, and also boost investment and economic development throughout such local communities.

The business plan goes on to state that it will be initially located in [redacted] Florida with operations scheduled for 2024. The business plan listed [redacted] initial main services as Advisory Services, Business Package – HR Policies & Procedures Implementation, Employee Trainings and Development, and Workshop (2-days event).

B. 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. *Id.* at 889.

The Petitioner provided the Director with a business plan, resume, diploma, academic evaluation, employment verification letters, evidence of the Petitioner's work in the field, letters of recommendation, and industry report and articles. However, the Director determined that the Petitioner had not submitted sufficient evidence to establish her eligibility under any of the three prongs of the *Dhanasar* framework and denied the petition. Thus, the Director concluded that the Petitioner demonstrated that the proposed endeavor is of substantial merit.

On appeal, the Petitioner contends that the Director "did not apply the proper standard of proof . . . instead imposing a stricter standard, and erroneously applied the law . . . ." (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's resume outlining her experience; the business plan which extensively describes her credentials, expertise, and professional accomplishments and the projected benefits she offers the United States; evidence of the Petitioner's work in the field demonstrating her vast contributions; letters of recommendation; and industry report and articles showing the national importance of the proposed endeavor and the steep shortage of professionals in her field.

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). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

The Petitioner submitted letters of recommendation praising her personal and professional achievements and qualifications. However, as the Director observed, the authors did not discuss the Petitioner's proposed endeavor or meaningfully demonstrate how it would have national importance for the United States. We acknowledge that the Petitioner's experience and professional accomplishments would make her invaluable to any organization. However, the Petitioner's reliance on her professional experience and professional achievements to establish the national importance of her proposed endeavor is misplaced. Her professional experience relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N 3 Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar* 's first prong.

The Petitioner argues on appeal that she will create value for U.S. organizations through "improved performance, achieved by providing objective advice regarding the optimization of business processes using respected industry methodologies" and "implementing effective HR development, and strategic planning." The record includes a business plan which argues that her proposed endeavor has national importance based on potential economic benefits to the "underutilized" business area of [redacted] Florida.

The Petitioner argues that her business has the potential to significantly contribute to the U.S. economy through job creation and economic impact. She states that it is her intention to promote economic development by serving both businesses and individuals throughout the country. She notes that HR consulting accounts for an estimated 28.8% of industry revenue in 2021. The Petitioner asserts that in addition to its economic impact, her endeavor also "benefits the national interests of the United States." (emphasis omitted). She points out that small businesses have been majorly affected by the COVID-19 pandemic with respect to mass layoffs and closures, the risk of closure with negatively associated lengthy waits to reopen, and an undetermined likelihood of COVID-19 related disruption. The Petitioner claims that many small businesses are financially fragile, and a majority of businesses planned on seeking funding through the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Petitioner proffers that her business is perfectly suited to assist small and medium sized businesses, and her 13 years' experience in the HR consulting and business industry will progressively and positively impact the U.S. Moreover, the Petitioner asserts that she is knowledgeable regarding potentially profitable markets for U.S. companies in regions that are economically strategic, yet extremely complex; and able to advise corporations about potential opportunities for business development and corporate expansion, as well as effective HR strategies and initiatives.

While we acknowledge the Petitioner's claims, she has not provided sufficient evidence to substantiate them. She has not identified any specific human resources consulting engagements for which she plans to offer services, nor has she offered evidence of a direct connection between her human resources consulting services and a boost in her clients' product or services sales. As such, she has not demonstrated that any of those potential sales are of such a magnitude as to affect a particular industry, jobs, or the U.S. economy. Further, the Petitioner has not shown that the benefits to the regional or national economy resulting from her human resources consulting work would result in substantial positive effects.

The Petitioner's business plan indicates that she intends to hire 29 employees in a five-year period. However, she has not established that the potential employment of 29 employees at the planned rate of pay would have substantial positive effects in [redacted] Florida with its population of 442, 241.[2] *See* https://data.census.gov/profile/[redacted]Florida[redacted] The business plan does not demonstrate that the proposed endeavor offers benefits which extend beyond the community to impact business industry more broadly. Although the business plan claimed that 145 indirect jobs would be created, there was insufficient detail provided about the location of these jobs and whether there would be substantial positive effects in an economically depressed area as contemplated by the first *Dhanasar* prong. *Id.* at 889-90.

The Petitioner has not sufficiently documented the potential prospective impact of her proposed endeavor, including the asserted economic benefits to the United States and the areas it intends to serve. The Petitioner has documented the growth of the human resources industry as a whole and provided articles and industry reports to support her assertions. However, the growth and importance of an industry is not sufficient to meet the national importance requirement under the *Dhanasar* framework. 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. *Id.* at

[2] At the time of decision, the Director referenced a population of 439, 890 in Miami, Florida but did not provide a source for this information.

889. 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 the field more broadly. *Id.* at 893. Similarly, the record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of human resources, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* The evidence does not suggest that the Petitioner's human resources consulting business would impact the field more broadly.

The Petitioner has not provided corroborating evidence to support her claims that her business' activities stand to provide substantial economic benefits to underutilized business communities or the United States. Statements and claims alone are not sufficient to demonstrate her endeavor has the potential to provide economic benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as the owner of her human resources consulting business would impact the human resources field more broadly, rather than benefiting her business and her clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

As stated in her business plan, the Petitioner's intention to base her company in a Small Business Administration (SBA) HUBZone is unpersuasive. The HUBZone program's goal is to promote business growth in underutilized business zones with the goal of awarding 3% of federal contract dollars to companies that are HUBZone certified. Joining the HUBZone program makes a business eligible to compete for certain federal contracts in the "set-aside" category. There are several required qualifications to participate in the program, but the most dispositive requirement for purposes of our analysis is that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. The record is clear that the Petitioner's proposed endeavor would be wholly owned and controlled by the Petitioner and that the Petitioner is not a U.S. citizen, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. And to the extent the Petitioner asserts that she would base her company in an SBA HUBZone designated underutilized business zone, the record does not adequately establish that increased employment in these designated underutilized business zones would have positive economic effects commensurate with national importance. So, the fact that the Petitioner' proposed endeavor may be in a HUBZone is wholly irrelevant to whether the Petitioner's endeavor rises to a level of national importance.

Based on the above, the Petitioner has not demonstrated that the effects of her proposed endeavor extend beyond her business and her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the owner of her proposed human resources consulting business offers the claimed innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed human resources consulting work and the claimed potential economic benefits.

C. The Remaining *Dhanasar* Prongs

Because the Petitioner does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, she has not demonstrated eligibility for a national interest waiver as a matter of discretion. The identified basis for denial is dispositive of the Petitioner's appeal, therefore we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments regarding the second and third prongs under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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).

III. CONCLUSION

The Petitioner has not established the national importance of her proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, she has not demonstrated that she is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.