U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28879895

Date: AUG. 22, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a civil construction project manager engineer, 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 the record did not establish that eligibility for 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 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

The Petitioner proposes to operate [redacted] a Florida-based construction and remodeling company, providing services to residential and commercial property owners. She has almost two decades of experience in the area of civil engineering including in the areas of strategic planning, business management, technical leadership, integration of disciplines and project problem solving, and she has a master's degree in planning and environment.

The first prong of the *Dhanasar* analysis, 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. The Director concluded and we agree that the Petitioner's endeavor has substantial merit.

On appeal the Petitioner asserts USCIS abused its discretion in determining that the business plan did not provide sufficient documentation to support the assertions regarding the income and employment projections. She contends the record contains abundant information to establish the national importance of the proposed endeavor.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact and not the importance of the industry of the profession in which the individual will work; instead, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889

In *Dhanasar*, we noted that "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.* 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner did not demonstrate how her business would largely influence the field and rise to the level of 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. While the Petitioner asserts in the business plan that the endeavor will ensure that the "clients' projects are profitable, with high quality, operational, and environmentally sustainable standards," the record does not show through supporting documentation how her endeavor sufficiently extends beyond her prospective clients or employees, to impact the field or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner relies on the same assertions previously put forth before the Director, but notably does not discuss the evidence in the record with specificity, nor does she explain how it supports her claims or otherwise overcomes the conclusions regarding the limited prospective impact of her endeavor. Unsupported assertions and speculation

have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).

The Petitioner submitted letters from clients that discussed the impact of her work in the field and her handling of prior projects. One general contractor with whom she worked noted that the Petitioner is, "highly respected by her subordinates and skillfully managed the professionals involved with her projects," but this and the other letters do not show the broader impact of the Petitioner's work and instead discuss project limited to her specific clients, who employ her for their services. Moreover, the letters cover the Petitioner's prior work and accomplishments and relate more to the second prong rather than the first prong of the *Dhanasar* framework. *Id.* at 890.

While the Petitioner provided a business plan for the proposed company, she did not present any supporting evidence, corroborating the assertions and figures to explain how she arrived at these numbers in the business plan. Moreover, the Petitioner did not demonstrate how her business plan's claimed revenue and employment projections have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The business plan forecasts sales from $972,000 in year 1 to $1,348,000 in year 5, but the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the business plan claims the creation of 3 positions by year 5, the Petitioner did not demonstrate the relevance of these 3 positions and show that such future staffing levels would provide substantial economic benefits to the region or the U.S. economy more broadly. The Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. The Petitioner's reliance on articles supporting a well-drafted business plan is misplaced because the Director did not assert the plan lacks a detailed strategy. The Director contends and we agree that the plan does not specify how the revenue and job creation will have a national impact. For all these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Finally, the Petitioner did not establish how the civil engineering company has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. Again, the business plan discusses commercial and residential real estate development projects without showing the projected U.S. economic impact or job creation attributable to the Petitioner's particular services or company.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[2]

[2] *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 applicants do not otherwise meet their burden of proof).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.