U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32456809

Date: AUG. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial consultant 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 discretionary 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 although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the evidence did not demonstrate that a discretionary waiver of the required job offer, and therefore labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, n.2 (AAO 2015). Petitioners bear the burden of proof to establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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 the framework for adjudicating national interest waiver petitions, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

The Director determined that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree based on her foreign bachelor's degree and at least five years of progressive post-degree experience in the field of specialty. 8 C.F.R. § 204.5(k)(1)-(2), (k)(3)(i)(B).

[1] *See, e.g.*, *Brasil v. DHS*, 28 F.4th 1189 (11th Cir. 2022) (concluding that the national interest waiver determination is nonreviewable and discretionary in nature).

The record contains a bachelor's degree and the underlying school transcript from Brazil, a diploma evaluation on U.S. equivalency, as well as letters from former employers, supervisors, and colleagues attesting to the Petitioner's experience and skills.[2]

The remaining issue on appeal is whether the Petitioner warrants a discretionary national interest waiver under *Dhanasar*'s three-pronged framework, any one of which is dispositive. *Dhanasar*'s first prong focuses on substantial merit and national importance of the specific endeavor the Petitioner proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be shown in areas such as business, entrepreneurialism, science, technology, culture, health, or education. In assessing national importance of a proposed endeavor, we consider its potential prospective impact. *Id.*

The Petitioner intends to work as a financial consultant and operate her own firm [redacted] that will provide financial and investment planning advice to individuals and businesses. The Director determined that although the Petitioner's proposed work has substantial merit, the evidence did not establish that it has national importance and therefore did not meet *Dhanasar*'s first prong. On appeal, the Petitioner submits a brief along with additional industry reports and government policy statements on economic initiatives involving the financial sector and small businesses. She alleges that the Director failed to consider all relevant evidence and did not reach the remaining *Dhanasar* prongs.[3]

We conclude that the record does not demonstrate that the Petitioner's proposed endeavor would have significant potential to employ U.S. workers, broadly impact the industry beyond her business, or otherwise have broader economic or societal implications rising to the level of national importance.

Under the applicable preponderance of the evidence standard, we consider not only the quantity, but also the quality, including relevance and probative value, of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In reasserting that her proposed endeavor has national importance, the Petitioner reiterates her academic credentials and professional experience, as indicated in her statement, resume, business plan, and support letters, and continues to reference general industry reports and articles on the financial services industry and small businesses. She avers that, given her expertise, background, and increasing demand for high quality financial consultants, she is ideally positioned to substantially contribute to the national economy and her industry, which she claims is supported by government incentives and has huge market potential. However, the Petitioner's reliance on her experience and credentials relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. For *Dhanasar's* first prong, we assess the specific endeavor she proposes to undertake and its prospective impact, rather than focusing on her experience and expertise

[2] However, given our resolution of this appeal on a separate dispositive issue as discussed below, we need not address the Director's finding on the underlying EB-2 classification eligibility or independently reach this threshold issue.

[3] Although the Petitioner submits new industry reports and articles on government initiatives, the Director issued a request for evidence and specifically notified her of the evidentiary deficiency regarding the issue of national importance and provided her an opportunity to submit additional evidence below, in response to which she submitted similar documents. We are thus not required to consider the new documents on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal where "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). Even if we were to consider the appeal documents, for the reasons discussed by the Director and herein below, they do not specifically relate to the Petitioner's proposed endeavor or its claimed national importance.

or the field or industry in which she proposes to engage based on her qualifications. In doing so, we look to evidence of whether the proposed endeavor has broader implications within a field and industry. *Id.* at 889. Although we acknowledge that the Petitioner's proposed endeavor could have a positive impact on her future business and customers, she has not persuasively explained, and the evidence does not show, how her proposed work would have broader implications for the financial services industry and U.S. economy as she claims, beyond her own business and its potential clientele.

In *Dhanasar*, we also noted that endeavors with "significant potential to employ U.S. workers" or those having "substantial positive economic effects, particularly in an economically depressed area" *may* have national importance. *Id.* at 890. The Petitioner's business plan includes an organizational chart and a five-year plan indicating that her firm in its first year will initially have six employees comprising herself as chief executive officer, one business consultant, one financial analyst, one project manager, one operation assistant, and one secretary; and by year five, 18 employees working under her, comprising four business consultants, two sales consultants, two financial education consultants, three financial analysts, three project managers, two secretaries, one operation assistant, and one administrative assistant. But the record does not include any evidence-based justifications for the staffing projections and the claimed need for the stated numbers of employees. The record also does not include any description or related evidence as to the hiring criteria or process. Even assuming the accuracy and validity of the Petitioner's staffing projections, it is unclear how a small business with 18 employees evidences "significant potential to employ U.S. workers" as contemplated by *Dhanasar*. Although she also claimed below that her firm will be "responsible for" creating 65 indirect jobs in the same five-year time frame, the record does not contain any independent evidence indicating that the claimed indirect impact would be directly attributable to her proposed business.

The Petitioner further maintains that her firm will continue to generate significant economic activities. The business plan also includes financial conjectures projecting, by year five, total operating expenses of around $1.4 million, gross profit of over $1.5 million, and remaining net profit of $122,227 with resulting net worth of around $400,000. However, the record lacks corroborating evidence that would objectively substantiate these projections, such as an independent basis for the claimed net worth, payroll and tax expenses, and the source of the claimed revenue. Even if the projections were to materialize, she does not claim, and the record does not show, that these figures indicate the substantial positive economic impact of her endeavor at a level commensurate with national importance. Although the Petitioner further claims that her firm will also provide financial education to its future clients and help underserved minority communities and low income families, the record does not include any specific probative evidence as to how her company's proposed outreach activities would broadly benefit the financial services industry or any regional or national economy. Further, the Petitioner does not specifically claim, and the record does not reflect, that her company would in fact directly serve any economically depressed area, or that it offers a novel, innovative business model that would be recognized and adopted by the industry. The business plan by itself therefore does not establish a significant potential to employ U.S. workers or substantial positive economic or other benefits indicating national importance. And the Petitioner's aspirational assertions, recommendation letters, industry reports, and general government policy initiatives, do not otherwise validate the claimed national importance of her proposed endeavor .

While we acknowledge the Petitioner's desire to contribute to the financial services industry, she has not established with specific, probative evidence that her proposed endeavor has broader national

implications beyond her own business and future clients. The Petitioner therefore has not met the national importance prong as required under the *Dhanasar* framework for a national interest waiver.

ORDER: The appeal is dismissed.