U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31285563

Date: AUG. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers, concluding the Petitioner had not established eligibility for the underlying EB-2 immigrant classification and 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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. 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,[3] grant a national interest waiver if the petitioner demonstrates that:

- 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. EB-2 CLASSIFICATION

The Petitioner asserts in the record below that she is a professional who has attained the equivalent of an advanced degree and possesses exceptional ability in her field of accounting. Other than claiming to be an advanced degree professional, the Petitioner does not discuss this eligibility ground for EB-2 visa classification and the Director does not analyze this issue. As the Petitioner does not claim on appeal that she is an advanced degree professional or that the Director erred by not analyzing whether she is an advanced degree professional, we consider the issue to be waived. See, e.g., Matter of O-R-E-, 428 I&N Dec. 330, 336 n.5 (BIA 2021) (citing Matter of R-A-M-, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

The Director determined that the Petitioner submitted documentation satisfying at least three of six categories of evidence under 8 C.F.R. § 204.5(k)(3)(ii) for demonstrating exceptional ability. However, in conducting a final merits determination, the Director found the Petitioner's evidence in its totality did not show that she is recognized as having the requisite degree of expertise in the field of accounting, as claimed, and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States as required under section 203(b)(2)(A) of the Act to establish her eligibility for EB-2 classification as an individual of exceptional ability.

The Director further determined that while the submitted evidence established that the Petitioner is well positioned to advance her proposed endeavor, the Petitioner has not demonstrated her proposed endeavor is of substantial merit and national importance and that it would be beneficial to the United States to waive the job offer and labor certification requirements.

On appeal, the Petitioner submits a brief. As the Petitioner has not demonstrated the national importance of the proposed endeavor, as outlined below, we reserve the Petitioner's arguments

[3] 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).

regarding whether she qualifies for EB-2 visa classification as an individual of exceptional ability and whether the Petitioner has demonstrated the third Dhanasar prong. 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 alternative issues on appeal where an applicant is otherwise ineligible).

III. NATIONAL INTEREST WAIVER

Regarding the national interest waiver, the first prong of the Dhanasar framework for national interest waivers relates to substantial merit and national importance of the specific proposed endeavor. Matter of Dhanasar, 26 I&N Dec. at 889. To support her assertion that her proposed endeavor has substantial merit and national importance, the Petitioner submitted evidence including an executive summary statement requesting that we allow her attorney's brief to serve as her statement, a proposed endeavor statement, a professional plan, an updated professional plan, two expert letters, and recommendation letters.

According to the Petitioner, her proposed endeavor is to offer her vast experience to implement the most modern accounting strategies and techniques, evaluate financial operations, recommend best practices, identify problems and create strategies and solutions, help organizations run efficiently, provide guidance on reducing costs, increasing revenue, and maximizing profits, and provide risk analysis to drive exponential growth for U.S. organizations.

The professional plans submitted by the Petitioner describe the role of accounting in businesses, the Petitioner's accounting experience and clarify that she proposes to use her experience to advise U.S. companies on how to maximize or increase their profit, to protect their market value, enhance profitability, thereby affecting other sectors of the U.S. economy and life. The expert letter dated October 2022, is authored by an associate professor of accounting from [redacted] who stated the Petitioner will work in an area of substantial merit and national importance and offer diversified accounting and consulting services to allow U.S. companies to increase their efficiency and productivity, thereby stimulating the U.S. economy. The author describes the Petitioner's capacity to develop strong relationships and her ability to teach financial concepts to impart information and publicize her services. Another expert letter, dated June 2023, and authored by an assistant professor of accounting at [redacted] who, in addressing the national importance of the Petitioner's endeavor, discussed the Petitioner's background, the importance of accounting industry, and asserted that the Petitioner's endeavor would contribute to optimizing and advancing U.S. financial institutions, and meet the demand for accounting officials. The Petitioner's recommendation letters, authored by her work colleagues, discussed the impact of her work for the authors' respective employers.

The Director determined that the Petitioner did not establish her proposed endeavor is of substantial merit and that she did not submit sufficient independent objective evidence to establish that her proposed endeavor will have a broader impact outside the organizations that will employ her or that the benefits to the regional or national economy resulting from her proposed endeavor would reach the level of "substantial positive economic effects" commensurate with national importance as contemplated by the first prong of Dhanasar.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. Id. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Id. On appeal, the Petitioner asserts that her proposed endeavor will generate positive impacts in all of these segments, but most specifically business and entrepreneurialism. Although the Director found the proposed endeavor did not possess substantial merit, the Petitioner's proposed plans and expert letters reflect her endeavor falls within one or more of the areas contemplated by Dhanasar. The Petitioner has therefore sufficiently established the substantial merit of her endeavor, and we withdraw the Director's determination to the contrary.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. The Petitioner's brief submitted below addressed the national importance of her endeavor, explaining how accounting is the backbone of any and all businesses, how providing specialized accounting services allows a business to run efficiently, effectively, and accurately, how minor accounting errors can generate financial losses, unhappy customers, and legal action, and how estimated revenue from accounting services is a significant economic contributor. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." Id.

In the underlying brief, the Petitioner claimed that her proposed endeavor has significant potential to employ U.S. workers, and to allow U.S. companies to achieve efficient and effective growth through accurate data-driven decisions. The Petitioner further asserted that her expertise in accounting taxation will assist small businesses advance, which will contribute to the finance industry and will impact the local economy and social welfare of the American people, and that her knowledge of Brazilian and U.S. markets and tax regulations will allow her to advise U.S. companies and facilitate the export of U.S. goods and services. However, as noted by the Director, the Petitioner did not present independent objective evidence in the record below to corroborate her assertions. Her professional plans provided, for example, statistics on small businesses stating they account for 44% of U.S. economic activity and the Petitioner deduced from this data, without explanation, that her endeavor, which includes helping a small business' accounting practice, will thereby affect the greater economy. The expert letters described, e.g., the Petitioner's skills such as her ability to develop strong relationships but did not similarly detail how her endeavor will allow U.S. companies to increase their efficiency and productivity to stimulate the U.S. economy. In addition, her recommendation letters did not describe the broader impact of the Petitioner's work on the national or global economy or the field of accounting in general. Moreover, the letters cover the Petitioner's prior work and accomplishments and relate more to the second prong pertaining to whether a petitioner is well-positioned to advance their proposed endeavor, rather than on the national importance of the endeavor itself under the first prong of the Dhanasar framework. Id. at 890.[4] We therefore agree with the Director's finding that the Petitioner did not establish that her proposed endeavor will have a broader impact outside the organizations that will employ her or that the benefits to the regional or national economy resulting from her proposed endeavor would reach the level of "substantial positive economic effects" as

[4] In response to the Director's request for evidence, the Petitioner also described how her services are valued and discusses a few employers' intent to hire her. However, this information would also relate more to the second Dhanasar prong, which "shifts the focus from the proposed endeavor to the foreign national" rather than the national importance of her endeavor.

contemplated by the first prong of Dhanasar. Id. Moreover, although she asserts that she could broadly impact the field by single-handedly providing accounting services to affect the finance industry and the social welfare of the American people, the record does not show that her proposed endeavor has broader implications beyond her current and future customers.

The Petitioner also explained in her underlying brief that there is a professional demand for accountants and a talent shortage, and her services will create better accounting departments, which will attract more candidates for accounting positions. However, the alleged shortage of occupations or occupational skills does not render her proposed endeavor nationally important under the Dhanasar framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. Moreover, as stated above, the Petitioner does not explain how her claims of improving accounting departments, even if substantiated by the record, effects and establish national importance." Id. at 890.

On appeal, the Petitioner asserts that her evidence may not be tangible or quantifiable but is nonetheless significant. However, the Petitioner does not explain what evidence is significant or how the Director erred in determining that the record does not support the national importance of her endeavor. Rather, the Petitioner's appeal brief restates the assertions in the record below that her professional plans support the national importance of her endeavor, the accounting field is nationally important, her endeavor will address national shortages of accountants, and we should weigh her professional history, accomplishments, and professional demand in assessing the national importance of her endeavor. Our analysis above serves to address these assertions on appeal.

The Petitioner also highlights that her services will be relevant to the small business sector, which plays a vital role in the United States economy and is a matter that a government entity has described as having national importance. She specifies on appeal that small businesses fail due to difficulties related to financial operations and specialized accounting services like what she can provide are necessary to the survival of small businesses. In evaluating national importance under the first prong of the Dhanasar framework, we will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. However, the Petitioner must demonstrate the potential prospective impact of her specific proposed endeavor in that area, which she has not done. The Petitioner does not submit evidence or point to where in the record she establishes that any benefits to small businesses from her endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. Accordingly, the Petitioner has not established the national importance of her proposed endeavor under prong one of Dhanasar.

IV. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.