U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33656545

Date: AUG. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accounting specialist, 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

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. *See id.* at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the endeavor as a plan to found "an accounting, tax preparation, bookkeeping, and payroll services firm that provides (a) accounting outsourcing services, (b) tax preparation outsourcing services, (c) payroll processing outsourcing services, (d) accounts payable management outsourcing services and (e) corporate opening and ITIN registration services." The Petitioner submitted a copy of a business plan that indicates the accounting outsourcing company intends to be headquartered in [redacted] Florida, expanding to [redacted] Alabama, in the third year of operations, and to [redacted] Mississippi, in the fifth year of operations. The business plan generally describes the accounting outsourcing company's target clients as "American companies."

The business plan asserts that the company will employ 21 workers—including the Petitioner as the company's "CEO"—in the first year of operations, increasing to a total of 68 total workers in the fifth year of operations, and that it would "generate a total of 88 indirect jobs." The business plan indicates the Petitioner's company would employ eight "accountants and auditors" and "accounting and auditing specialists," respectively, two "payroll and timekeeping analysts," and one "general and operations manager," "administrative assistant," and "janitor and cleaner" respectively, at the [redacted] location in the first year of operations, adding additional workers in those job categories as the company expands in the third and fifth years. However, the plan does not elaborate on the nature, location, wages, and other details of the indirect jobs it asserts the proposed endeavor would create. The business plan further indicates that the anticipated payroll for the first year of operations would be $809,674 for 21 workers, increasing to $2,741,945 in the fifth year of operations for 68 workers. We note that the workers' average annual wages would be approximately $38,500 and $40,300 in the first and fifth years, respectively, based on those figures.

The Director determined that, although the record establishes the proposed endeavor has substantial merit, it does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. The Director

acknowledged evidence in the record; however, the Director noted that the Petitioner's focus on her "past skills, services, career, and attributes are irrelevant in establishing if the proposed endeavor is of national importance," as opposed to their relevance to the second *Dhanasar* prong, which addresses whether an individual is well-positioned to advance a proposed endeavor. *See id.* at 888-91. The Director noted details in the Petitioner's business plan; however, the Director observed that the record does not establish how the "specific proposed endeavor would have any implications beyond her clients, to impact the field, industry, or the U.S. economy more broadly on a level commensurate with national importance." More specifically, the Director acknowledged that the business plan indicates the Petitioner's startup company would generate 68 direct jobs and 88 indirect jobs within its first five years of operation; however, the Director observed that the record "fails to provide how the specific proposed endeavor would operate on such a large scale to create jobs and revenues" that the business plan claims would occur. The Director also noted that the record does not establish how the startup company's direct—and even indirect—job creation would "improve a national shortage related to accounting or will trigger substantial positive economic impacts" as the Petitioner asserted would result from the proposed endeavor. The Director further concluded that the record does not satisfy the second or third *Dhanasar* prongs. *See id.* at 888-91.

On appeal, the Petitioner reasserts that the business plan's discussion of job creation and revenue expectations demonstrate the proposed endeavor may have national importance. The Petitioner also generally states on appeal that the proposed endeavor "aligns with several key federal initiatives, including those of the Small Business Administration and the U.S. Department of Commerce," without elaborating on how the proposed endeavor aligns with those initiatives or how such an alignment would demonstrate the proposed endeavor's importance. The Petitioner further generally asserts on appeal that the proposed endeavor would fill "a critical gap in financial services, especially in regions lacking adequate professional services in accounting and financial management," without elaborating on any evidence in the record that relates to regions with inadequate professional accounting and financial management services and how, specifically, the proposed endeavor would affect any particular inadequacy.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The record establishes that the proposed endeavor may benefit the Petitioner, as the owner of the startup accounting services company, the workers whom the Petitioner plans to employ, and the generalized "American companies" that may be the accounting services company's clients and customers. However, the record does not establish how the potential prospective impact of the proposed endeavor may have the type of broader implications indicative of national importance, as contemplated by *Dhanasar*. *See id.*

We acknowledge that the Petitioner's business plan anticipates employing approximately 21 workers in [redacted], Florida, [redacted] Alabama, and [redacted] Mississippi, respectively, with an average annual wage of approximately $40,300. However, *Dhanasar* contemplates note merely the prospect of job creation but a "significant potential to employ U.S. workers" as a type of substantial positive economic effect that may indicate national importance. *Id.* The record does not establish how employing the various accountants, administrative assistants, janitors, and other job categories in those numbers, at those wages, and in those locations demonstrates the proposed endeavor's potential to employ U.S. workers would have the type of significance contemplated by *Dhanasar* as substantial positive economic effects that may indicate national importance. We further acknowledge that the business plan anticipates that the proposed endeavor would indirectly create an additional 88 jobs; however, as noted above, the record does not elaborate on details of the indirect jobs the business plan anticipates, such as the nature, location, and wages of those positions. Without more information than a mere number of abstract workers in some unspecified location(s), the record does not establish the significance of that hypothetical job creation. *See id.*

The Petitioner asserts on appeal that her proposed endeavor "aligns with several key federal initiatives, including those of the Small Business Administration and the U.S. Department of Commerce." However, she does not elaborate on appeal how the proposed endeavor aligns with those initiatives or how such an alignment would demonstrate the proposed endeavor's importance. On the contrary, as explained above, the relevant question for determining national importance is not the importance of the industry, field, or profession in which an individual will work. Instead, the relevant question is whether the potential prospective impact of the specific endeavor that an individual proposes to undertake may have the type of broader implications indicative of national importance. *See id.*

The Petitioner asserts that the Small Business Administration and the U.S. Department of Commerce initiatives are "aimed at bolstering small businesses and facilitating trade and investment," and that some of her accounting services company's customers may be small businesses generally "navigating international markets" who would use the company's "corporate opening and ITIN registration" services. However, she does not clarify on appeal how the record establishes what the referenced federal initiatives are. As noted above, Petitioners bear the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Without more information about the actual federal initiatives, the record does not establish how the proposed endeavor may align with the initiatives. More to the point, without establishing how the proposed endeavor may align with certain initiatives for lack of probative information about those initiatives, the record does not establish how such a hypothetical alignment may demonstrate the type of national importance contemplated by *Dhanasar*. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91.

Next, although the Petitioner asserts on appeal that the proposed endeavor would fill "a critical gap in financial services, especially in regions lacking adequate professional services in accounting and financial management," she does not establish on appeal that there is a critical gap in financial services, whether in regions lacking adequate professional services in accounting and financial management or elsewhere, and how the proposed endeavor would fill such a gap. Again, Petitioners bear the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Relatedly, the record does not establish how the potential impact of the proposed endeavor may have national or even global implications within the field of accounting, or any other particular field, that may indicate national importance as contemplated by the first *Dhanasar* prong.

See Matter of Dhanasar, 26 I&N Dec. at 889-90. For example, the record does not establish how any of the accounting services the Petitioner's company would provide may be like "certain improved manufacturing processes or medical advances." *Id.* Instead, as noted above, the record establishes that the proposed endeavor would provide routine accounting services that would benefit the generalized "American companies" that may be the accounting services company's clients and customers.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or 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. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.