U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35119328

Date: DEC. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an architect/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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she 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. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

We set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) that on

[1] *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner proposes to operate an architecture firm, [redacted] 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 a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Director concluded that the Petitioner did not establish the proposed endeavor's substantial merit and national importance, that she is well positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director erroneously denied the petition. The Petitioner further contends that the Director failed to apply the proper standard of proof and instead imposed a novel standard.

While we do not discuss every piece of evidence individually, we have reviewed the record and have considered the Petitioner's eligibility for the national interest waiver. The Petitioner states that her firm will specialize in providing architecture and interior design services across U.S. territory, catering to the specific needs of individuals and businesses. The Petitioner explains that her firm will operate out of

[redacted] Massachusetts. The record includes a business plan, expert opinion letter, recommendation letters, letter of intent to invest, and industry reports and articles.

The Petitioner asserts that her proposed endeavor is of substantial merit and national importance because of the "ripple effects generated upon significant commercial matters, the domestic job market, the national economy, and the overall ecosystem." In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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. Here, the Petitioner contends that her proposed endeavor will strengthen the U.S. economy and create direct and indirect jobs for the U.S. While we acknowledge that the Petitioner's proposed endeavor has substantial merit, the Petitioner, nonetheless, has not demonstrated its national importance.

The Petitioner claims through her business plan that her company will create 33 direct jobs and 165 indirect jobs by the fifth year, while also generating a total revenue of $2,427,337.50. Further, the Petitioner declares that her endeavor will boost the flow of money across the U.S. on a national scale. However, the Petitioner does not sufficiently explain how she plans to achieve these staffing targets and revenue projections. The Petitioner also fails to demonstrate how her endeavor will bring substantial economic benefit that would rise to the level of national importance. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner states that her proposed endeavor has a national scope and will generate significant benefits nationwide "due to the ripple effects of her professional activities." The Petitioner further claims that she will establish her proposed endeavor within a Small Business Administration (SBA) designated HUBZone in [redacted] Massachusetts. The Petitioner, however, has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. We are also not persuaded by the Petitioner's intention to operate her proposed endeavor within a HUBZone since the Petitioner has not adequately established what parameters the SBA considers when it establishes HUBZones. We therefore cannot evaluate whether these SBA-identified underutilized business zones are akin to the types of economically depressed areas within which creating employment could be a potential positive economic effect.[2] More importantly, the Petitioner has not offered sufficient information and

[2] The HUBZone program's goal is to promote business growth in underutilized business zones by awarding 3% of federal contract dollars to HUBZone-certified companies. That certification 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 one for our analysis today is that the business seeking to participate in the HUBZone program must

evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance.

The Petitioner argues that her proposed endeavor will have a broad impact in the field of architecture and improve industry trends. She also contends that her endeavor aligns with several government initiatives and highlights the growing demand for architectural services. The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that her specific endeavor has national importance under *Dhanasar's* first prong. The Petitioner emphasizes her extensive experience in the architectural industry, as well as her expertise in project management and entrepreneurship. Although we acknowledge the Petitioner's evidence and assertions, we conclude that the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her clients to enhance societal welfare on a broader scale indicative of national importance. 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 his field more broadly. *Id.* at 893. Here, the record does not establish that the Petitioner's proposed endeavor's impact will be nationally important. Moreover, although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's professional experience is generally material to *Dhanasar*'s second prong—whether an individual is well positioned to advance a proposed endeavor—but they are generally immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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

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 reasons.

ORDER: The appeal is dismissed.

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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. While it is unknown and the record is silent as to whether any federal programs exist in the "set-aside" category for endeavors like the one the Petitioner proposes, it appears as though 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. We therefore question whether the Petitioner would even be eligible to participate in the HUBZone program.