U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 35049622

Date: DEC. 20, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an industrial designer, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but 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.

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. *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,[1] 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

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

- On balance, waiving the job offer requirement would benefit the United States.

*Id.*

The Director determined that the Petitioner's proposed endeavor did not have substantial merit or national importance. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Matter of Dhanasar*, 26 I&N Dec. at 889. The record before us contains evidence of the substantiality of the proposed endeavor's merit in the field of business. Therefore, the record supports the substantial merit of the Petitioner's proposed endeavor, and we withdraw the Director's determination to the contrary.

Alongside demonstrating its substantial merit, a petitioner must also showcase the national importance of their proposed endeavor. We conclude that the Petitioner's proposed endeavor did not have the required national importance to meet the first prong of the *Dhanasar* framework.

The first prong of the *Dhanasar* analytical framework focuses on the specific endeavor that the individual proposes to undertake. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner proposed to "perform as an Industrial Designer and provide [her] specialized services in BRANDING & MARKETING, STRATEGIC PLANNING, COMMERCIAL, AND TRADING AND PRODUCT MANAGEMENT areas to impact the Product Design field through innovation in the U.S." She stated that the companies and organizations that she will contribute to "will experience a better product quality and implementation, assertive brand and marketing strategies, profitability, sustainability, resources efficiency and customer satisfaction."

We observe the Petitioner's proposed endeavor is largely a job search. For example, the Petitioner expressed her interest to "perform as an Industrial Designer" at companies and organizations. A job offer is not a prerequisite to the filing of an immigrant petition in the EB-2 classification when seeking a national interest waiver. But the purpose of a national interest waiver is not to enable a petitioner to engage in a search of a job offer in the United States. Therefore, an endeavor consisting of offering job duties in search of employment with an employer with an objective for a particular benefit, such as "specialized services in BRANDING & MARKETING, STRATEGIC PLANNING, COMMERCIAL, AND TRADING AND PRODUCT MANAGEMENT areas" is not an endeavor, but a job search. An individual's job search does not have potential prospective impact on the national interest because it does not broadly implicate matters of national importance. And a noncitizen's job search, even if ultimately successful, does not relate to any potential positive economic effects that rise to a level of national importance.

But, even if we were to put to the side our view that the Petitioner's proposed endeavor constitutes little more than a job search, we would still conclude that the endeavor as proposed does not rise to one at a level of national importance. The Petitioner described the endeavor in the context of her having "provided substantial evidence that her work will have a significant prospective impact, including broader implications within her field, potential national or global influence, significant employment potential for U.S. workers, substantial positive economic effects, and contributions to societal welfare." The Petitioner also highlights her "19 years of experience in managing complex projects, her expertise in creating innovative product designs and implementing effective commercial

strategies." However, the Petitioner's experience, expertise, and skills are relevant to *Dhanasar's* second prong, which evaluates whether an individual is well positioned to advance a proposed endeavor; her prior experience does not establish that her proposed endeavor has national importance. *Id.* at 888-91.

Thus, the main basis of the Petitioner's claim of eligibility for the act of discretion to waive the requirement of a job offer, and thus a labor certification, in the national interest comes from the Petitioner's statements regarding her past career in her home country, her dedication to her field, and the potential manner in which the duties she intends to perform could benefit individual employers in a variety of different industries who could hire her. But these facts are not relevant to the question of whether a proposed endeavor elevates to a position of national importance. When evaluating the national importance of a proposed endeavor, 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.* at 889. We are therefore not concerned with the individual petitioner when evaluating the first prong of the *Dhanasar* analytical framework; we are focused on the petitioner's proposed endeavor.

And to demonstrate the national importance of a proposed endeavor under *Dhanasar's* first prong, we look to its potential prospective impact. In *Dhanasar* we said that "we look for broader implications." *Id.* Broader implications are not necessarily evaluated from a narrow frame of reference such as geography; implications within a field which demonstrate a national or even international influence of broader scale can rise to a level of national importance. And substantial positive economic impacts, such as a significant potential to employ U.S. workers particularly in an economically depressed area, can also help a proposed endeavor rise to a level of national importance. The success of the endeavor, or attributes that could tend to make the endeavor more successful, are consequently not as important as determining whether the proposed endeavor itself stripped away from a petitioner, has attributes that would highlight the prospective positive impact of its broader implications or positive economic effects rising to a level of national importance. Here, the Petitioner's endeavor, such that it is, is deficient. The Petitioner's endeavor is at its core the performance of job duties in "BRANDING & MARKETING, STRATEGIC PLANNING, COMMERCIAL, AND TRADING AND PRODUCT MANAGEMENT areas." But the record does not sufficiently evidence how the Petitioner intends to perform these duties. And the record does not adequately support how the performance of these duties by the Petitioner would potentially prospectively impact her field nationally, or even globally, in a manner that rise to the level of the national interest. Moreover, the record does not sufficiently describe the proposed endeavor's broader implications on matters rising to a level of national importance. Further, the record does not contain information or evidence regarding any projected direct economic impacts or job creation attributable to the Petitioner's future work within the context of her specific proposed endeavor. While the Petitioner submitted a professional plan and a supplement to the professional plan outlining the types of services she may provide to U.S. businesses, she did not provide a business plan or any other plans or projections explaining the expected scope of her intended activities, nor did she otherwise support her general claim that her proposed endeavor would have potential positive economic effects at a level commensurate with national importance.

Furthermore, the Petitioner asserts her contributions in the field of industrial design, "particularly in optimizing product design and marketing strategies, will help U.S. companies adopt advanced methodologies that can drive productivity, efficiency, and job creation." She further states her endeavor "has a ripple effect on job creation, contributing to the livelihood of U.S. workers across various sectors, from manufacturing to logistics" and that her work "will stimulate innovation, economic growth and enhance societal welfare." It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. While any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the asserted potential prospective impact of her proposed endeavor stands to have national, or even global, impact to her field or offer broader implications, or generate substantial positive economic effects. The Petitioner has not sufficiently described her proposed endeavor beyond the sphere of individuals or entities seeking out her services. This is akin to teaching which we determined in *Dhanasar* did not rise to a level of having national importance. *Id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her future customers and employer(s) to impact her field of industrial design, the economy, or U.S. societal welfare more broadly at a level commensurate with national importance. Therefore, the Petitioner has not provided evidence demonstrating that her proposed endeavor would operate on such a scale as to rise to a level of national importance.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs, and we hereby reserve them. *See INS v. Bagamasbad,* 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. The burden of proof is on the Petitioner to establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.