U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29853411

Date: FEB. 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial manager, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer in this category - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that a waiver of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the merits of her national interest waiver request. On appeal, the Petitioner contends that the Director made "numerous erroneous conclusions of both law and fact." She asserts that, contrary to the Director's decision: her proposed U.S. work has "national importance;" she is "well positioned" to advance the endeavor; and, on balance, a waiver would benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has not established the claimed national importance of her proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as members of the professions holding "advanced degrees" or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ the individuals in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements if they demonstrate that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that a university in the Petitioner's home country of Brazil awarded her a bachelor's degree in social communication, with a major in public relations. Thereafter, a technology company in Brazil employed her for about 17 years, most recently as a customer care manager.

The Petitioner came to the United States in 2022. She proposes to provide commercial management services to U.S. businesses, advising them in such areas as: customer relationships; strategic planning; team management; and "endomarketing," which she says focuses on internal communications and employee engagement. To continue providing commercial management services, she states that she would either form her own business or work for an established U.S. company.

B. EB-2 Eligibility

The record supports the Director's conclusion that the Petitioner qualifies for the EB-2 category as an advanced degree professional. She submitted evidence that her Brazilian degree equates to a U.S. bachelor's degree and that she gained more than five years of post-baccalaureate experience in the business field. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty").

C. Substantial Merit

A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner submitted evidence that her commercial management services could help U.S. businesses generate more revenues and jobs. We therefore also agree with the Director that the Petitioner's proposal has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

The Director found insufficient evidence that the Petitioner's proposed work would significantly impact the U.S. economy or generate a significant number of jobs. The Director also found that the Petitioner had not demonstrated that her proposed endeavor would broadly affect her field, enhance societal welfare, or provide cultural or artistic enrichment.

On appeal, the Petitioner states that, by improving U.S. businesses' efficiency and competitiveness, her commercial management services would help generate more revenues and jobs. She states that she would teach businesses to understand and cater to their customers' needs and expectations, leading to professional development opportunities and job creation.

The Petitioner also contends that her "innovative and unique techniques will revolutionize the field and have far-reaching effects on the economy, workforce, business landscape, and societal welfare." She states: "By placing customers at the center of business operations, [she] will reshape the way businesses interact with customers, leading to a more prosperous and customer-centric landscape in the United States." She states that her commercial management services would provide many other benefits to U.S. businesses, including: improving their access to financing by providing their leaders with proper data; increasing their understanding of market trends; and helping them to better manage customer relations.

The record, however, does not sufficiently establish that the Petitioner's proposed endeavor has national importance. She has not demonstrated that the scope of her commercial management services would be broad enough to affect the national economy. If she decides to establish her own company, the record lacks a business plan providing her business's projected revenues and its number of employees and customers. The Petitioner also has not established that her business would support an economically depressed area. If the Petitioner opts to work for an established U.S. company, she has not indicated how many businesses she would serve. Further, although the Petitioner claims that she would "revolutionize" the commercial management field, she has not demonstrated that her services or customer-centric techniques would introduce advancements to the field.

The Petitioner provided expert opinion letters from two U.S. university professors: an associate professor of marketing and a business professor. Both letters state that the Petitioner's proposed work has national importance because her commercial management services would financially strengthen U.S. businesses, creating jobs and increasing tax revenues.

We recognize the professors as experts in their fields. But they are not experts in determining national importance in waiver adjudications. *See Matter of A-*, 7 I&N Dec. 657, 659-60 (Ass't. Comm'r 1958) (stating that expert testimony "may not be accepted as complete proof that the basic requirements [of a petition or application] have been met"). Neither expert explains how the Petitioner's *particular* proposed endeavor has national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). A particular proposed undertaking must have at least "national . . . implications" for the economy or the relevant field. *Id.* The Petitioner's experts state that her proposed work would positively benefit the U.S. economy. But they do not explain how her *specific* proposal - by itself - has national implications for the economy or her field.

As the Director found, the Petitioner's proposed endeavor resembles one we encountered in *Dhanasar*. There, the petitioner proposed teaching courses to U.S. university students in science, technology, engineering, and mathematics (STEM) disciplines. *Matter of Dhanasar*, 26 I&N Dec. at 893. We agreed that the proposal had substantial merit. *Id.* But we concluded that the petitioner did not demonstrate that his proposed teaching of a limited number of students would "more broadly" affect the U.S. STEM education field. *Id.*

Similarly, the Petitioner's proposed commercial management services have substantial merit. But, like the petitioner in *Dhanasar*, she has not demonstrated that her particular activities would "more broadly" affect the U.S. economy or the commercial management field.

The Petitioner has not demonstrated that her proposed U.S. endeavor has national importance. Thus, under the *Dhanasar* framework, she does not qualify for a national interest waiver. Therefore, because the petition lacks a job offer and a labor certification, we cannot approve the filing.

E. Other Issues

Our conclusion regarding the claimed national importance of the Petitioner's proposed endeavor resolves this appeal. We therefore decline to reach and hereby reserve her appellate arguments regarding her positioning to advance her proposed venture and the claimed benefits of a waiver to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has not demonstrated that her proposed U.S. endeavor has national importance. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.