U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29834195

Date: FEB. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 did not qualify for EB-2 classification and that 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.

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 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. In addition, a petitioner must establish 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, 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 also 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).

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

II. ANALYSIS

Regarding the national interest waiver, the first prong relates to the substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. 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.

With respect to her proposed endeavor, the Petitioner indicated that she planned "to operate a business in home health care and physical support performed by employing services in the patients'/clients' own homes in the [redacted] Florida." She asserted that her company "will initially serve the following market segments: general care and follow-up of patients, personal care, and physical support services." The Petitioner further stated: "I hope to be able to expand to the entire state of Florida, primarily through a franchise network . . . ."

In addition, the Petitioner submitted the business plan for her proposed company. This business plan includes industry and market analyses, information about her company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's work experience, and a description of company personnel. Regarding future full-time staffing, the Petitioner's business plan anticipates that her company will employ 14 personnel, but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while her plan offers revenue projections of $745,113 in year one, $869,299 in year two, $1,396,432 in year three, $2,288,671 in year four, and $4,001,121 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The record includes information about job openings in the United States for home health aid workers, Florida employment trends, health benefits associated with physical therapy, the home care industry, wages and revenue in the home health services sector, the value of small businesses to the U.S. economy, and the 2024 budget for the U.S. Small Business Administration. While this information helps show the merit of the Petitioner's undertaking, it does not establish her particular proposed endeavor's national importance. In determining national importance, the relevant question is not the value of small businesses, home care services, or the Petitioner's general occupation; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still establish the potential prospective impact of her specific proposed endeavor.

The Petitioner also provided letters of support from M-B-, M-H-D-B-, P-G-, A-D-L-, C-S-F-, E-M-A-, and F-H-N- discussing her physical therapy capabilities and experience. The Petitioner's education, skills, knowledge, and prior work in her field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong.

Furthermore, the Petitioner submitted an "Expert Opinion Letter" from J-A-, a program director at [redacted], in support of her national interest waiver. J-A- contended that the

Petitioner's proposed work is of national importance because her generic occupation of physical therapist and the home healthcare industry stand to contribute to our nation's economy, enhance societal welfare, and advance White House initiatives (such as the "Build Back Better Plan"). The issue here, however, is not the national importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The letter from Dr. J-A- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work operating a home healthcare and physical support services company offers broader implications in her industry, enhancements to U.S. societal welfare, or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not demonstrated that her undertaking "has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation." In addition, the Director indicated that the Petitioner had not shown that her proposed work offers "national implications within a particular field or industry."

In her appeal brief, the Petitioner argues that her proposed endeavor is of national importance due to growing demand in her industry and a "shortage of home health professionals." We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to a shortage of workers in her field. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner asserts that her undertaking "will directly create 14 new job opportunities in the U.S." as well as "121.55 indirect jobs." She also claims that her proposed endeavor offers "supply chain and enterprise potential," a source of government tax revenue, knowledge transfer to her employees, and other positive economic effects. Moreover, the Petitioner states that her company will operate "in a socially responsible and environmentally sustainable manner." The Petitioner further contends that her proposed work stands to benefit "the local market and prosperity of the national economy." The Petitioner, however, has not provided evidence demonstrating that her proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the potential economic activity of her specific endeavor stands to generate substantial positive economic effects in the region where her company will operate or in other parts of the United States.

In determining national importance, we explained in *Dhanasar* 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.* at 889. 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. While the Petitioner's statements reflect her intention to provide valuable home healthcare and physical support services to her company's clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level 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, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its future clientele to impact her field, the home healthcare industry, the U.S. economy, or U.S. societal welfare more broadly at a level commensurate with national importance.

Furthermore, the Petitioner 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 our nation. Specifically, she has not demonstrated that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that her company has growth potential, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her endeavor has "potential to employ U.S. workers," she has not offered sufficient evidence that her endeavor offers Florida or the United States a substantial economic benefit through employment levels, tax revenue, or business activity.

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*. We also reserve a determination on the Petitioner's eligibility for the underlying EB-2 classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.