U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29847734

Date: FEB. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an architect and project manager, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

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. Next, a petitioner must then demonstrate 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 that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[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).

- 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.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a definitive statement submitted with the petition, the Petitioner stated that she intends to work as an architect and project manager in the United States. Specifically, she stated as follows:

> My career plan in the United States is to continue my career working with American companies that require my specialized knowledge, experience, and expertise. I intend to continue designing, maintaining good working relationships, and identifying any opportunities for development in the architecture and project management sector. My goal is to continue my work coordinating all architecture projects, utilizing my experience and overall success to lead companies in developing new architecture projects, ultimately benefiting the United States economy.
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> My over 13-year career to date has been significant. If my waiver is granted, I will contribute directly to the field of architecture and project management, helping to construct and design functional and aesthetic spaces for U.S. companies, institutions, organizations, and infrastructure, among many things. In reality, I am not competing against other U.S. Architects and Project Managers, since my experience lies in the areas of architecture, urban planning, project management, sales, corporate and residential markets, civil construction, project execution, interior design, detailed design, logistics, product storage, supply chain and procurement. I would be of great assistance in providing the much needed demand for expert architects.

She also stated that her proposed endeavor would potentially impact the United States by creating jobs and tax revenue, facilitating cross-border architectural projects by helping U.S. companies negotiate contracts with international companies particularly in Latin America, and timely completing large and highly complex projects. Regarding potential economic benefits, she claimed that her proposed endeavor will seize the market and investment opportunities for U.S. companies and lucrative markets in Latin American countries, reduce operating costs, increase property values, optimize the structural integrity of buildings, and generate U.S. tax revenue and create American jobs.

The initial filing also included copies of the Petitioner's academic credentials and resume, a job offer letter from a Florida home improvement company offering her contract work as an architect and project manager, an expert opinion letter, letters of recommendation, and industry articles and reports in support of her eligibility.

The Director issued a request for evidence (RFE), noting that while the Petitioner's evidence was sufficient to establish that her proposed endeavor has substantial merit, the record was insufficient to demonstrate that the proposed endeavor had national importance.[2] The Director determined that the Petitioner had not demonstrated that the proposed endeavor would impact the regional or national population at a level consistent with national importance. As a result, the Director requested a detailed description of the proposed endeavor in order to evaluate her request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner's counsel submitted a letter claiming that the Petitioner's proposed endeavor "is national in scope" because it will "generate substantial ripple effects upon key commercial and business activities on behalf of the United States – namely, serving the architecture sector." Counsel further emphasized the Petitioner's professional history and experience, noting that she is uniquely qualified to advance her proposed endeavor.

The Petitioner also submitted a definitive statement indicating that she intends to develop her own architecture firm, [redacted] Specifically, she stated that her company "will specialized in comprehensive architecture services by offering design and planning, project management, and construction supervision services." In support of this assertion, she submitted a copy of the company's business plan, indicating that she will serve as the company's CEO and that it anticipates employing 19 individuals and earning a total revenue of approximately $2.81 million by its fifth year of operations. The Petitioner also submitted additional industry articles and reports in support of her eligibility. Although she initially stated her intent to work as an architect and project manager for U.S. companies, her definitive statement in response to the RFE made no further mention of this endeavor.

In denying the petition, the Director determined that although the Petitioner's proposed endeavor has substantial merit, the record did not establish that the endeavor is of national importance. Specifically, the Director noted that the Petitioner did not establish that her proposed endeavor had implications beyond her self-owned company at a level sufficient to demonstrate national importance. The Director further determined that the Petitioner did not establish that her proposed endeavor would have a broader impact on the architecture industry, specifically noting that "benefits that are isolated to a single institution or locality in the United States might be so attenuated at the national level as to preclude a finding that the proposed endeavor has national importance."

On appeal, counsel for the Petitioner asserts that USCIS "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to the detriment of the Appellant." The Petitioner also asserts, through counsel, that the Director disregarded the evidence

[2] Prior to this RFE, the Director issued an RFE noting that the Petitioner had demonstrated the national importance of her proposed endeavor. The second RFE, issued on December 6, 2022, advised the Petitioner that this determination had been made in error and requested additional evidence to demonstrate that her proposed endeavor had national importance.

submitted, and provides a brief that emphasizes her qualifications as an entrepreneur in the architecture industry and asserts that the evidence of record establishes the national importance of the proposed endeavor.

For the reasons provided below, we agree with the Director that the Petitioner has not demonstrated the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Preliminarily, we note that the Petitioner's proposed endeavor is material to whether the endeavor is of national importance. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

As noted above, the Petitioner introduced a new proposed endeavor in response to the RFE rather than establishing the national importance of the proposed endeavor described in the initial petition. The Petitioner's new plan in the RFE reply to develop her own architecture firm and serve as its CEO describe a new set of facts regarding the proposed endeavor and were presented after the filing date, and thus cannot retroactively establish eligibility.[3] Accordingly, we find that the Petitioner made an impermissible material change to her proposed endeavor. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. *See* 8 C.F.R. § 103.2(b)(1). Therefore, on appeal, we will consider if the record demonstrates that her initial proposed endeavor - working as an architect and project manager for U.S. companies - has national importance. We conclude it does not.

In determining national importance, the relevant question is not the importance of the 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. 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we

[3] The record demonstrates that her architecture firm was incorporated in Florida in [redacted]2023, nearly three years after the instant petition was filed.

look to evidence documenting the "potential prospective impact" of her work. 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 her field more broadly. *Id.* at 893.

As initially stated, the Petitioner intends to work as an architect and project manager for U.S. companies. On appeal, the Petitioner contends that the Director did not duly consider certain pieces of evidence, such as her resume and experience, her company's business plan, her work in the field, letters of recommendation, and industry articles and reports, and relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.[4]

For example, while the Petitioner submitted letters of support from former colleagues and business associates that speak to her talents and accomplishments on various architecture and design projects undertaken by her in Brazil and Angola, none of the authors discussed the Petitioner's endeavor as initially stated. Instead, the authors primarily focused on the Petitioner's past work experience and accomplishments. Although the record contains statements regarding the Petitioner's career in the architecture industry, and although the letter writers praise the Petitioner's qualifications and commend her work, the Petitioner's experience and past accomplishments are not relevant to the first part of the *Dhanasar* framework, but to the second - whether the Petitioner is well positioned to advance the proposed endeavor. Neither the letters nor any other evidence within the record provide insight into how the Petitioner's endeavor to work as an architect and project manager for architecture firms in Florida will positively impact the region or the industry beyond her employers and their clients. Again, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.*

The record contains an expert opinion letter from a professor of architecture at the [redacted] who concludes that the Petitioner's proposed work has national importance. But the professor does not base his conclusion on the national importance of the Petitioner's specific endeavor. Although he recites the Petitioner's career history and accomplishments, and concludes that she "is very well qualified to pursue this endeavor," his findings stem from the significance of the architecture industry generally, and particularly note the need for architects due to the anticipated growth of corporate projects and government contracts in response to factors such as climate change and overall population increases. Under *Dhanasar*, however, the Petitioner must establish the national importance of her specific proposed endeavor, which is narrower than the overall area, field, or industry in which the Petitioner seeks employment. The letter did not mention the Petitioner's proposed endeavor, which is to work as an architect and project manager for U.S. companies in Florida. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable").

[4] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The Petitioner also claims that her proposed endeavor has national importance because the United States faces a significant national architect shortage. In addition, the Petitioner asserts that architects and the field of architecture and design are extremely important to the economy and that her proposed endeavor will offer substantial positive economic impacts. In support of these arguments, she offered numerous articles and industry reports discussing immigration, entrepreneurship, the architecture industry, and the shortage of architects. While these articles and reports provide useful background information, we examine the endeavor itself to evaluate its broader impact. These materials do not specifically describe the Petitioner's proposed endeavor or its potential impact, but rather amount to background information about general subjects. Furthermore, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not established how her individual employment would affect national architecture employment levels or the U.S. economy more broadly consistent with national importance. It is important to note that the shortage of architects does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the beneficial implications and national importance of the Petitioner's proposed endeavor as an architect and project manager, and entrepreneur in the architecture industry, are largely reported by institutions of distinguished reputation and major media. On appeal, counsel emphasizes the Petitioner's experience in the field and asserts that her proposed endeavor "aligns with the national interest by promoting architectural development, economic growth, and job creation." Assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

The Petitioner has not shown that she intends to pursue her initial endeavor and the evidence of record does not demonstrate that the endeavor realistically has significant potential to employ U.S. workers or otherwise offer substantial positive economic benefits for the United States. Consequently, the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning eligibility under the *Dhanasar* framework. *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 she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.