U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185393

Date: FEB. 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology specialist and entrepreneur, seeks second preference 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. 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 the Petitioner had not established eligibility for 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, petitioners 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, petitioners must show the merit of 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if:

- 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

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

> I . . . plan to work as CEO of [redacted] in the United States if my EB2 NIW petition is approved.
>
> [redacted] is based in [redacted] FL. The company's mission is to offer an efficient, economical, and user-friendly software, which allows systematically to controll [sic] all the inputs and outputs of a company's products and thus offering fluidity, efficiency, speed, and transparency to our customers, greatly facilitating the administrative and logistics management of any company in the United States, thus favoring interstate commerce, and strengthening the National economy.
>
> . . . .
>
> I intend to be self-employed in a manner that does not adversely affect U.S. workers. Working as CEO for my own business, [redacted] will allow me to use my experience in the computer science and business fields to help other individuals and companies improve operations and achieve higher quality of products and services, thereby generating revenues within the country and creating employment opportunities. Growth supported by companies pay dividends for all U.S. citizens by increasing tax revenues to the federal and state governments, and by increasing the funds available to spend on hospitals, schools, roads, and other essential services.

In response to the Director's request for evidence, the Petitioner maintained that her "proposed endeavor is to use [her] academic formation and working experience as an IT entrepreneur and specialist to operate [her] own business, [redacted] which has been incorporated and will have its principal place of business in the state of Florida."

The Director concluded the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. Regarding substantial merit, the endeavor's merits may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889.

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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner argues the importance of immigrant entrepreneurship, immigrants affecting the business community, and other related topics, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of owning and operating her company rather than the importance of the overall

topics, fields, or industries.[2] In *Dhanasar*, we 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.

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. *Dhanasar*, 26 I&N Dec. at 889. While the Petitioner claims her business aligns with national security initiatives and protects critical infrastructure, the Petitioner did not demonstrate how her proposed endeavor largely influences the field and rises to the level of national importance. In *Dhanasar*, we determined 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. Likewise, the record does not show through supporting documentation how her business stands to sufficiently extend beyond prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner also contends that her endeavor falls within a STEM [science, technology, engineering, or mathematics] profession and asserts a "tech shortage." However, the alleged shortage of occupations or occupational skills 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. Furthermore, with respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.[3] Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.[4] On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance.[5]

Moreover, the Petitioner contends that she presented an expert opinion letter from J-S-S- who found her proposed endeavor to have national importance. While the letter opines on the potential benefits of the company's software and services, the letter does not explain how they have broader implications for our country. Here, the letter repeats the same arguments addressed above without showing the wider effect in the field rather than limited to the clients who would utilize the software or services.

In addition, the Petitioner emphasizes her "15 years of progressive working experience," "requisite level of expertise," "professional background," "outstanding achievements," and "record of accomplishments." However, the Petitioner's knowledge, skills, and abilities relate to the second

[2] The Petitioner's arguments and associated evidence relate more to the substantial merit aspect of the proposed endeavor rather than the national importance part.
[3] *See generally* 5 USCIS Policy Manual D.2, https://www.uscis.gov/policymanual.
[4] *Id.*
[5] *Id.*

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.

Finally, the Petitioner did not demonstrate how her business plan's claimed revenue and employment projections, even if credible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan forecasts sales from $238K in year 1 to $497K in year 5, the Petitioner did not establish that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, although the business plan claims the creation of 2 positions in year 1 and 6 positions in year 5, as well as 34 indirect jobs, the Petitioner did not demonstrate that such future staffing levels would provide substantial economic benefits to the [redacted] Florida region or U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not show that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

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. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[6]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility 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.

[6] *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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).