U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30186044

Date: FEB. 29, 2024

Appeal of Texas Service Center Decision

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

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 professional plan and statement submitted with the petition, the Petitioner stated that she intends to continue her activities as a legal consultant in the United States and noted that her familiarity with Brazilian law and business operations will assist U.S. companies engaged in cross-border projects.

She further stated:

> My proposed endeavor is to offer my extensive experience in litigation prevention, advice, and assistance on civil, administrative, consumer, corporate, and labor law. I will focus on small companies and start-ups to enable efficient operations and provide legal certainty for business activities and transactions.
>
> I will apply my technical knowledge and extensive experience as a legal consultant to afford American citizens and companies the confidence and tools to operate in American and Brazilian markets. In the same line of work, I will benefit the United States economy by using my legal skills and established professional reputation in other jurisdictions to attract and facilitate foreign nationals and companies to do business in America.

She also indicated that she will provide legal advice to start-ups and small companies, provide entrepreneurs with business planning and cost reduction advice, and offer damage prevention to U.S. companies by anticipating risks. In addition, she indicated that she will support business negotiations and facilitate cross-border transactions for American and Brazilian companies. She also claimed that her endeavor would positively impact the U.S. economy by improving startup business environments, enabling job creation, promoting overall business growth, and promoting capital accumulation.

In addition to her professional plan and statement, the Petitioner submitted copies of her academic credentials, an expert opinion letter, letters of recommendation, certificates, media recognition, and records of achievements.

The Director determined that the Petitioner's initial filing did not establish that the proposed endeavor had substantial merit or national importance. The Director observed that the Petitioner did not provide specific insight as to what she intends to do in the United States, and requested a detailed description of the proposed endeavor so that her request for a national interest waiver could be evaluated under the *Dhanasar* framework.

In response, the Petitioner's counsel indicated in a letter of support that the Petitioner intended to open a consulting company in the United States, focusing on various areas such as planning for business internationalization and investments, immigration planning for professionals and owners, financial and investment planning, and corporate accounting planning. Counsel further indicated that the Petitioner's objective is to provide comprehensive legal and management services to international clients who are interested in developing or restructuring their businesses in the United States.

The Petitioner submitted a new professional plan and statement, indicating that she intended to provide legal and consulting services through her own company that she will incorporate in the United States. She further indicated that she would serve as the company's owner, main proponent, and director. The Petitioner also submitted additional letters of recommendation in support of her eligibility for a waiver of the job offer.

In denying the petition, the Director determined that the Petitioner demonstrated the proposed endeavor's substantial merit, but did not provide sufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that her proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner provides a brief emphasizing her qualifications as a lawyer in Brazil and her multicultural knowledge that will benefit U.S. companies by facilitating cross-border transactions. She further asserts that by encouraging U.S. businesses to expand to overseas markets, her services will provide substantial benefits to corporations and the U.S. economy.

Upon review, we agree with the Director's determination that the proposed endeavor has substantial merit. For the reasons set forth below, however, we concur with the Director's determination that the record does not demonstrate the proposed endeavor's national importance.

In determining national importance, the relevant question is not the 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. 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.

The Petitioner claims that her proposed endeavor has national importance because legal consulting services impact all sectors of the economy. In support of her assertions, she offered information about the importance and significance of cross-border transactions. We recognize the value of legal consulting services; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

Similarly, the Petitioner's professional plans emphasize the value of legal consulting services instead of focusing on the prospective impact of her specific endeavor. The Petitioner discusses the benefits of legal consulting, highlighting how her familiarity with Brazilian law and Brazilian business operations will promote and facilitate cross-border transactions and stimulate the U.S. economy by creating jobs and revenue. However, the Petitioner does not point to any corroborating evidence that would directly link her specific endeavor to the overall economy's growth. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Throughout the record and in her professional plans, the Petitioner points to her background, education, and experience in her field. The Petitioner also provided several letters of support that discuss her legal capabilities and experience.[2] The Petitioner's knowledge, skills, and experience 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." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. 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 evidence indicates that she is an experienced attorney in Brazil who appears to be well-respected by her colleagues, the record does not contain evidence that the Petitioner's past achievements resulted in a broad impact on the legal field, and the Petitioner's general, conclusory statements to the contrary are insufficient to meet her burden of proof. We also note that while a petitioner's past work and achievements may be helpful in illustrating how they plan to carry out their proposed endeavor or its potential prospective impact, the focus of the first prong is on the proposed endeavor itself and not the petitioner. *See id.* at 889.

The Petitioner submitted an advisory opinion from [redacted], associate teaching professor of law at [redacted] Professor [redacted] letter generally discusses the Petitioner's qualifications and experience as a lawyer and her potential to provide legal and business consulting services to companies seeking to expand into international markets. Professor [redacted] also discusses the Petitioner's professional experience and accomplishments and notes that her expertise in Brazilian law will potentially benefit U.S. companies and clients in a variety of business and commercial transactions.

Professor [redacted] however, does not discuss with specificity the Petitioner's proposed endeavor, or how such an endeavor will have national or global implications within the field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects, particularly in an economically depressed area as mandated by *Dhanasar*. *Id.* at 890. Although she discusses the Petitioner's qualifications, as well as the importance of the legal sector, the growing demand for legal

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

professionals, and the importance of cross-border transactions and relations, her conclusion is not based on the national importance of the Petitioner's specific endeavor. Moreover, while she recites the Petitioner's career history and accomplishments, and praises her success as a lawyer in Brazil, Professor [redacted] findings stem from the significance of law and legal services, particularly in relation to legal and business consulting for U.S. companies engaging in business with Brazil and Latin America. 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"). The letter does not contain sufficient information and explanation of the Petitioner's proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a legal consultant offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance.

We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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." *See Dhanasar*, 26 I&N Dec. at 890. Although the Petitioner recounts the value and importance of law and legal services and their general impact on business growth, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id*. at 889.

While the Petitioner claims that she will use the legal system to help clients, provide advice to corporations on a variety of legal issues, promote the growth of U.S. jobs, and facilitate cross-border transactions through her legal and business consulting services, several of these objectives simply describe the typical occupational duties of a legal and business consultant rather than establishing that the Petitioner's specific proposed endeavor has national importance.[3] Additionally, other than listing these objectives, the Petitioner's professional plans do not provide further specific details as to how these objectives would be accomplished. The Petitioner's statements reflect her intention to provide valuable legal consulting services for her clients or employers, but 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. *See id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her employers or clients to impact her field, the legal and business sectors, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic

[3] In determining national importance, the analysis focuses on what the petitioner will be doing rather than the specific occupational classification. For instance, although the petitioner in *Matter of Dhanasar* was an engineer by occupation, the decision discusses his specific proposed endeavor "to engage in research and development relating to air and space propulsion systems, as well as to teach aerospace engineering." *See generally* 6 *USCIS Policy Manual* F.5(D)(1), http://www.uscis.gov/policy-manual; *see also Matter of Dhanasar*, 26 I&N Dec. at 891.

effects for our nation. Although her updated business plan includes financial calculations such as financial forecasts and salary projections for the first five years of operations, general assertions about her company's potential impact are not supported in the record by corroborating evidence of the plausibility of those assertions, and a lack of detail concerning her proposal makes it difficult to discern how the Petitioner's endeavor differs from that of others in the field who operate consulting firms in the United States. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's legal consulting services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, 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 remaining *Dhanasar* prongs. *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 that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.