U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31263794

Date: JUL. 01, 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, 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 qualified for classification as a member of the professions holding an advanced degree, but 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 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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then 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: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed

[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).

endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework. 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.

The Petitioner's proposed endeavor, as described in the business plan, is the development of:

> a complete nutritional solution through modular services to improve American's [sic] health and upgrade the quality control, handling, and storage of food served in schools and supermarkets. Services range from food safety consulting for schools and supermarkets, trainings for employees, nutritional advice for schools, cooking classes for children and seminars for parents.

On appeal she reiterates that she will "utilize her expertise in training professionals, preparing menus, monitoring school meals, consulting and teaching, and inspecting the hygiene and food used in school cafeterias through her proposed endeavor" and that "[b]y doing so, she aims to create a solid foundation for children to have nutritionally balanced eating habits, which will positively impact their health and energy performance."

The Director concluded that, although the Petitioner had established the substantial merit of her proposed endeavor, she had not demonstrated its national importance, that she is well-positioned to advance her proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

On appeal, the Petitioner asserts that the Director applied a standard of review and interpretation of the record that was "significantly" above the preponderance of the evidence standard. However, for the reasons discussed below, we agree with the Director's determination that the Petitioner did not establish the national significance of her proposed endeavor. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. 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. *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

[2] Because the Director determined the Petitioner is eligible for classification as a member of the professions possessing an advanced degree, the decision does not evaluate the Petitioner's alternative claim that she also qualifies for EB-2 classification as an individual of exceptional ability.

may have national importance for example, because it has national or even global implications within a particular field." *Dhanasar*, 26 I&N Dec. at 889. We determined in *Dhanasar* 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. 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.

On appeal, the Petitioner explains that the national importance of her proposed endeavor is demonstrated, in part, by the nutritional education it will provide to the U.S. public and to children to "create healthier professionals, soldiers, researchers, and athletes who understand how their eating habits affect their lives." In the record below, the Petitioner provided numerous articles and reports addressing the importance of good nutrition and its positive impacts both on children's health and present and future workforce productivity. The Petitioner also submitted an expert opinion letter from a professor at [redacted] discussing the important role that healthy diets play in the reduction of illness and the reduction of obesity-related conditions and in supporting healthy immune systems to mitigate "the effects of health on the COVID-19 pandemic." The professor therefore concludes that "the need for nutritionists has never been more important to the United States." We acknowledge the Petitioner's arguments that good nutrition positively impacts the nation's health and workforce productivity while reducing national healthcare expenditures, as well as the important role that nutritionists play in achieving these positive outcomes. However, 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." *Dhanasar,* 26 I&N Dec. at 889.

The Petitioner further contends on appeal that, as her proposed endeavor will result in economic impacts including "the creation of jobs, a notable economic surge" and "greater tax revenue," it is "evident that this endeavor holds immense national importance." The Petitioner provided the proposed endeavor's business plan, which includes an industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel.[3] The business plan states that the proposed endeavor will initially focus on providing services in Florida, that after its third year of operation it will expand operations to neighboring states, and that, from the fifth year of operation on the proposed endeavor plans to serve schools nationwide. However, the prospective expansion of the business is not supported by details showing how it will be achieved. The business plan further indicates that the proposed endeavor anticipates employing five personnel in year one, 11 in year two, 17 in year three, 23 in year four, and 25 in year five, and will generate revenues increasing from $240,711 in year one to $2,297,797 in year five. However, the projected job creation and revenues are not supported by details showing their basis or an explanation of how they will be achieved. Further, while the business plan indicates that the proposed endeavor will create an additional 111 indirect and induced jobs, this projection is the output of a model that uses net sales forecasts as an input; as with the job creation and revenues estimates, the sales forecasts are not supported by details showing their basis or an explanation of how they will be achieved. While the

[3] The Petitioner also submits the proposed endeavor's Florida Articles of Organization for a Limited Liability Corporation, Initial Resolutions, and a U.S. Department of the Treasury Internal Revenue Service application for an Employer Identification Number. Publicly available records reflect that the proposed endeavor's registration is current and active.

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*. *Dhanasar*, 26 I&N Dec. at 890. In addition, although the Petitioner asserts that her endeavor stands to generate jobs for U.S. workers, she has not offered sufficient evidence that this endeavor offers Florida or the United States a substantial economic benefit through employment levels or business activity.

The Petitioner also asserts that her proposed endeavor's dissemination of "knowledge and innovation across the nation" also demonstrates its national importance. She explains that through her proposed endeavor she will provide "basic food education in schools for children, professionals, parents and guardians" and "exclusive courses for employees … to improve food preparation and storage procedures within schools and supermarkets, ensuring better control of food waste and safety, and reducing health expenses from foodborne illness." The Petitioner asserts that these services will extend beyond her clients, "creating new business opportunities" and that they "possess the power to drive the economy in their respective markets." 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 food education in schools and supermarkets, as well as to children and their parents, 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. *Dhanasar,* 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its clientele to impact her field, nutrition, or the U.S. economy more broadly, at a level commensurate with national importance.

Finally, the Petitioner discusses the importance of entrepreneurship as "a driving force behind the US economy." The Petitioner notes that she possesses many qualities of a good entrepreneur, such as "show[ing] initiative, be[ing] innovative, and identify[ing] opportunities and organiz[ing] resources." She further explains that, as she discussed in the business plan, she has extensive professional and entrepreneurial experience, and therefore that the proposed endeavor "is more than likely to achieve its goals and will undoubtedly have a positive impact on the U.S. 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 affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of her proposed endeavor stands to offer broader implications in her industry or to generate substantial positive economic effects in United States as a whole.

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. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning her eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 reason.

ORDER: The appeal is dismissed.