U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31415539

Date: JULY 1, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition and a subsequent motion to reopen and reconsider the adverse decision, concluding that the Petitioner did not establish eligibility for a national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

Once 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 a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 determined that the Petitioner qualified for the EB-2 classification as an advanced degree professional, and we will not disturb this determination.[2] The only issue on appeal is whether the Petitioner has shown that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Upon review, we conclude that she has not.

The Petitioner represented in Part 6 of the instant Form I-140, Basic Information about the Proposed Employment, that the job title for her full-time position would be "Financial Manager," and her wages would be $131,710 per year. The Petitioner provided the following nontechnical description of her proposed employment: "create financial reports, direct investment activities, and develop plans for long-term financial goals of their organization." In an accompanying statement about her professional background and proposed endeavor, the Petitioner indicated that she planned "to work as an independent contractor in the United States upon receiving all necessary business licenses, assuming [her] application [was] approved and [she earned] the right to work legally in the United States of America." She concluded by expressing confidence that "the United States would benefit from [her] contributions as a Financial Manager."

In a subsequently issued request for evidence (RFE), the Director asked the Petitioner for more specific information about her proposed endeavor and documentation to establish its substantial merit and national importance. In response, the Petitioner submitted a business plan and evidence that she has formed a company, [redacted] by filing the Articles of Organization with the New York Department of State. In the business plan the Petitioner indicated that:

> [redacted] will build a solid business structure that can support the growth of the organization. The company will ensure that we hire competent and well-experienced hands to help us build an effective and profitable business.

The Petitioner identified herself as the company's "Chief Executive Officer/Lead Financial Advisor," and stated that she intended to invest $160,000 of her personal funds "to finance a range of expenses incurred prior to the launch of the company," including start-up expenses, professional fees, website development, branding, marketing, advertising, rent, travel, and other expenses. She further stated that she was the company's sole owner and would offer "a broad spectrum of services tailored to aid small and medium-sized businesses and their financial needs, especially in qualifying business loans," as well as "financial health consulting" and "financial analysis and optimization." Lastly, the Petitioner indicated that to carry out the company's mission she would hire a diverse team of professionals, including a general manager, an administrative and human resources manager, five financial advisors, a financial risk manager, a business developer, an accountant, a legal secretary, and a front desk officer.

[2] The record reflects that in 2019 the Petitioner obtained the degree of Master of Business Administration in Financial management.

In denying the petition, the Director observed that both [redacted] and the business plan appeared to have been created after the petition filing date and explained, citing *Matter of Izummi*, 22 I&N Dec. 169 (Comm'r 1998) and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg'l Comm'r 1971), that a petitioner must establish eligibility at the time of filing and may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. The Director determined that because at the time of filing the Petitioner did not provide a specific description of her proposed endeavor and its potential prospective impact, such as broader implications to the field of finance, significant potential to employ U.S. workers, or substantial positive economic effects required under the first prong of the *Dhanasar* analytical framework she did not show that her endeavor had national importance. The Director further found that the Petitioner also did not meet the remaining two prongs of *Dhanasar* and concluded that she therefore was not eligible for and did not merit a national interest waiver as a matter of discretion.

The Petitioner then filed a combined motion to reopen and reconsider the denial, asserting that the business plan she submitted in response to the RFE was meant only to give a detailed explanation of her future plans and there was "no trace of trying to make a material change" to the petition. To support her claim of the endeavor's national importance, the Petitioner submitted an undated letter from an individual who identified himself as a [redacted] Transformation & Change Program Manager, opining that "the services in the business plan of [redacted] are of utmost importance to the success of clients, many of whom are foreign nationals seeking to navigate the intricate financial landscape of the United States," and that "the company can excel in its field and make valuable contributions to the U.S. economy." The Director dismissed the motion finding that this new evidence was insufficient to overcome the grounds for denial, as it did not show that the Petitioner was eligible for the benefit sought at the time of filing and that changing her proposed endeavor from working as an independent contractor to creating a financial management business employing other individuals was immaterial to her eligibility. The Director further determined that notwithstanding the Petitioner's ineligibility at the time of filing, she did not show that the benefits to the regional or national economy resulting from operating her own financial consulting company would reach the level of "substantial positive economic effects" contemplated under the *Dahnasar* first prong analysis.

On appeal, the Petitioner reasserts that she did not make any material changes to the petition but merely provided more detailed information about her future plans, as requested in the RFE. She emphasizes that her proposed endeavor is *prospective* and points out that she only needs to demonstrate the endeavor's *potential prospective impact*. The Petitioner submits an online article about top jobs in the field of finance and accounting, references her RFE response, and asserts that her business plan explains in detail why her endeavor is in the U.S. national interest. We are not persuaded.

The Petitioner's initial description of the proposed endeavor did not include any references to forming and operating her own financial consulting company; rather, the Petitioner indicated that she would work as a *financial manager* for a yearly salary of $131,710 and stated generally that the United States would benefit from her contributions as a *financial manager*. We therefore agree with the Director that the Petitioner's response to the RFE presented a new set of facts regarding her proposed endeavor, which is material to her eligibility for a national interest waiver. As stated, a petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). A petition may not be approved at a future date after the petitioner may become eligible under a new set of facts. *See Matter of Izummi*,

22 I&N Dec. at 175; *Matter of Katigbak*, 14 I&N Dec. at 49. Here, the Petitioner's plan to create her own company and act as either its Chief Executive Officer (CEO) or a Lead Financial Advisor, which she proposed after filing date, cannot serve to retroactively establish her eligibility.

We acknowledge the Petitioner's assertion that by submitting the business plan in response to the RFE she merely intended to provide additional details about her proposed endeavor. However, in doing so the Petitioner substantially changed her original proposed endeavor – providing services as a financial manager who would "create financial reports, direct investment activities, and develop plans for long-term financial goals of their organization" – to being an owner and CEO of her own financial consulting company who would employ other workers, including managers and financial advisors. The Petitioner does not address how her role and responsibilities as the company's CEO might be compatible with or encompass the work of a financial manager providing services to other organizations. The business plan similarly does not include any references to the Petitioner's employment as a financial manager.

We cannot therefore conclude that the Petitioner's originally proposed endeavor did not materially change. If significant material changes are made to the initial benefit request, a petitioner must file a new petition[3] rather than seek approval of a petition filed without the initial evidence of eligibility required by applicable regulations and other USCIS instructions. 8 C.F.R. § 103.2(b)(1). For these reasons, the instant petition may not be approved.

Moreover, even if the Petitioner had presented her plan to establish and operate a financial consulting company at the time of filing, we agree with the Director that she has not sufficiently demonstrated the national importance of this endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner avers on appeal that she aims to stimulate job creation and boost the U.S. economy through the establishment of a finance consulting agency in New York, by providing employment to at least six skilled professionals specializing in financial advising, risk analysis, and accounting. She states that the agency will not only help those individuals secure stable jobs but will also deliver high-quality services to clients across various industries. She adds that as a result the agency will have a positive impact on the U.S. economy beyond job creation, because by employing skilled professionals it will contribute to increasing tax revenues and overall economic growth. In support, she submits a 2021 online article by the senior content marketing manager for Northeastern University, *12 In-Demand Finance and Accounting Careers*, referencing the University faculty member's statement that "companies are racing to find new finance and accounting talent." The article contains a list of top finance and accounting jobs, including financial managers, advisors, and consultants, as well as financial, budget, and credit analysts and accountants. The Petitioner asserts that this evidence underscores the importance of equipping U.S. business employees with advanced knowledge and skills to effectively tap into this expanding sector and drive further economic growth. She states that many businesses often face challenges in handling complex accounting and financial management due to a lack of accountants with expertise, and her "proposed outsourcing financial consulting agency is a popular and practical solution for small businesses, particularly those with limited resources and expertise."

[3] USCIS records show that after the Director denied the instant petition, the Petitioner filed a second Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver), which is currently pending adjudication.

We acknowledge the Petitioner's statements. However, in evaluating whether an endeavor is of national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake," and evidence of its "potential prospective impact." *See Dhanasar*, 26 I&N Dec. at 889. Accordingly, "we look for broader implications" of the proposed endeavor and consider whether "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field" or whether it "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

Here, although the Petitioner indicates that she intends to provide financial services to other businesses, the record as a whole remains insufficient to demonstrate that her proposed endeavor will extend beyond her company and its prospective clientele, such that it may impact the finance field more broadly and rise to the level of national importance. The Petitioner also has not shown how employing six professionals in New York, where she claims she will operate her company, establishes that her endeavor has a "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* Consequently, the Petitioner has not met her burden of proof to establish the national importance of her proposed endeavor required by the first prong of the *Dhanasar* decision.

Because she is ineligible for a national interest waiver on that basis alone, evaluating her eligibility under the second and third prongs outlined in *Dhanasar* at this time would serve no purpose, and we reserve our opinion on those issues. *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 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. The appeal therefore will be dismissed for the reasons discussed above, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.