U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31569887

Date: JULY 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer and information technology professional, 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 Texas Service Center denied the petition, concluding the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but 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 pursuant to 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

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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner submitted evidence that she holds the equivalent of a United States master's degree. The Director determined the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether she qualifies for and merits a waiver of the job offer requirement in the national interest.

In her autobiographical statement submitted initially, the Petitioner states she would like to become a successful business owner and information technology professional in the United States engaged in software development and quality assurance analysis and testing. In her business plan submitted in response to the Director's request for evidence, the Petitioner described her intention to form [redacted] a limited liability company (LLC) which would provide technological solutions tailored to the interior design industry and of which she would be the Chief Executive Officer (CEO). According to the business plan, the company would provide digital interior design consulting, three-dimensional visualization and modeling, virtual reality tours, design implementation assistance, and training and support. The business plan states the company would be based in New York and would serve a diverse clientele including individual homeowners, small businesses, large corporations, and construction companies.

In response to the Director's RFE, the Petitioner submitted evidence that the Articles of Organization of her company were filed with the New York Department of State, and letters from businesses interested in investing in and collaborating with her company. These documents are dated in July 2023 after her petition was filed in March 2023. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). Consequently, the Articles of Organization and the business letters submitted in response to the RFE cannot be considered in our assessment of the Petitioner's eligibility for a national interest waiver.

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of her proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed

area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that her work would sufficiently extend beyond her clients to impact her field more broadly at a level commensurate with national importance.

On appeal, the Petitioner asserts her company will have national importance because "[s]oftware developers, as transformative agents in the technology sector, play a crucial role in driving innovation and change." The Petitioner claims the rapid growth of the software development industry shows "the economic impact of software developer startups is significant." The Petitioner submits articles discussing research on software development statistics and how software developer startups drive change. These articles address the importance of software development, but do not mention the Petitioner or her proposed endeavor. Our assessment of national importance does not focus on the importance of a field or occupation in general, but instead "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

The Petitioner also claims her company is "poised for significant market impact" because it will tap into the global construction and design software market which was valued at 9.6 billion dollars in 2021. The Petitioner further asserts her company will generate significant employment opportunities for United States workers and contribute to broader economic development. The record does not support these claims. In her business plan, the Petitioner stated her company would employ six other individuals by its fifth year of operation. The Petitioner projected net income of $87,520 the first year, increasing to $350,630 in the fifth year of operation. The business plan does not state how these projections were made and the Petitioner did not submit evidence that this level of income and the employment of six people would have a substantial positive economic effect in New York.

The Petitioner also claims her proposed endeavor has national importance because it will offer advanced technologies at the forefront of industry trends. The Petitioner's business plan states the company will provide design software, a construction pro design suite, virtual reality headsets, a mobile application, and custom software solutions. The business plan does not discuss how these tools are innovative or will otherwise have national or even global implications in her field. *See id.* (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field).

On appeal, the Petitioner submits a recommendation letter from H-D-[2], her former employer at [redacted] H-D- praises the Petitioner's work for his company and states she was rapidly promoted shortly after joining his team. H-D- states the Petitioner's "skills, academic qualifications and expertise make her an outstanding candidate who will undoubtedly make significant contributions to the well-being of the IT companies in the United States." The Petitioner also submits a letter from R-Y-, the CEO of [redacted] and the Petitioner's current employer. R-Y- praises the Petitioner's work for his company and describes her as "one of the most exceptional members of [his] exclusive team." He also states that professionals like the Petitioner "are able to impact our economy positively contributing and reinforcing positive economic externalities." Like the authors of the support letters the Petitioner submitted initially, H-D- and R-Y- praise the Petitioner's past work and qualifications and express their confidence in her ability to succeed in the future, but they do not

[2] We use initials to protect the privacy of individuals referenced in this decision.

address her specific proposed endeavor. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it related to U.S. strategic interests).

On appeal, the Petitioner also submits a letter from B-D-W-, Professor of Computer Science, Information Systems and Cyber Security at [redacted] Oregon expressing his opinion that the Petitioner qualifies for a national interest waiver. Professor W- states that through focusing on environmental responsibility, innovation and technological advancements, talent development and retention, and strategic expansion, the Petitioner's company "is poised for continuous prosperity in the competitive arena of digital interior design" and is "a vital addition to the U.S. market." Professor W- discusses the growth and value of the construction and design software market within North America and the Asia Pacific region, but he does not specify how the Petitioner's specific proposed endeavor will impact her field beyond her individual clientele.

Professor W- also asserts the Petitioner's proposed endeavor will broadly enhance societal welfare by "reshaping the way we interact with and within our spaces, cultivating an environment that supports well-being, efficiency, and the democratization of design." He does not, however, specify how the Petitioner's company would provide these enhancements in a manner that would extend beyond her individual clientele to impact her field more broadly. *See id.* at 889 (explaining "we look for broader implications"). 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. *Id.* at 893. Here, the Petitioner has not established that her proposed endeavor would sufficiently extend beyond her individual clientele to impact her field more broadly at a level commensurate with national importance.

Professor W- further claims the Petitioner's proposed endeavor has national importance because it "intersects with national matters of significance," such as the federal government's strategic plan for advancing Building Information Modeling, fostering a skilled workforce as outlined in the American Innovation and Competitiveness Act, and focusing on sustainable development through the Executive Order on Tackling the Climate Crisis at Home and Abroad. The Petitioner did not submit evidence of these national initiatives and our assessment of national importance does not rest on the importance of national issues in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. While Professor W- references the Petitioner's company's commitment to environmental sustainability and "technologically forward" practices, he does not discuss how her company would impact these national initiatives through her work with individual clients on a level commensurate with national importance. *Cf. id.* at 892 (citing media articles and other evidence documenting Congressional interest in Dhanasar's research).

Although the relevant evidence establishes the substantial merit of the Petitioner's proposed endeavor, it does not demonstrate the Petitioner's proposed endeavor would have significant potential to employ U.S. workers, other substantial positive economic effects, national or even global implications within the field, or other broader implications indicating national importance. Consequently, the Petitioner does not meet the first *Dhanasar* prong.

The Petitioner asserts that *Matter of Dhanasar* should not bind our decision because its analytical framework is not contained in the statute at section 203(b)(2)(B)(i) of the Act, which does not limit our discretion to grant a national interest waiver. The Petitioner is mistaken. We are bound to follow

Matter of Dhanasar because it is a precedent decision. *See* 8 C.F.R. § 103.10(b) (precedent decisions of the Attorney General and Secretary of Homeland Security bind all officers of the Department of Homeland Security in all proceedings involving the same issue(s)).

B. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of her specific proposed endeavor and she does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of 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

The Petitioner has not established the national importance of her proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, she has not demonstrated that she is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.