U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31660486

Date: JUL. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a health auditor and an entrepreneur, seeks second preference 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 immigrant 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 the EB-2 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. 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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] *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. *Id.*

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 has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Petitioner proposes to work as a health auditor and establish a consulting firm to improve the work environment of U.S. companies. The Petitioner plans to develop an audit model that identifies the cause of labor absenteeism, prevent work-related illnesses and safety hazards, and enhance the occupational health of workers in the United States.

In evaluating *Dhanasar*'s first prong, the Director concluded that although the Petitioner established the substantial merit of the proposed endeavor, she did not establish its national importance.[3] Specifically, the Director found that the Petitioner did not establish that her audit models would have a broad impact on the field commensurate with national importance. The Director also found that the evidence was insufficient to establish the potential for significant positive economic effects. The Director stated that the evidence submitted emphasized the importance of the field or industry in general instead the importance of the Petitioner's specific proposed endeavor. Upon de novo review, we agree with the Director's conclusion.

The Petitioner claims on appeal that the Director disregarded the documentary evidence that demonstrates the endeavor's national importance such as "numerous reports, articles, and government initiatives" that are "aligned with the Petitioner's specific endeavor and its national relevance." However, these articles and reports provide a general overview of the field of occupational health and safety in workplaces and do not discuss the specific nature of the Petitioner' endeavor or the details of the innovative audit models that would broadly impact the field. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." *Id.*

[2] The record demonstrates that the Petitioner holds the foreign equivalent of two separate U.S. bachelor's degrees in physical education and business administration, as well as a U.S. master's degree in health administration.

[3] The Director did not analyze the second or third prongs of the *Dhanasar* framework, stating that because the Petitioner did not establish eligibility under the first prong, she did not demonstrate eligibility for a national interest waiver.

Here, the Director properly noted the deficiency in the record documenting the interest of the federal government or other relevant national agencies in the Petitioner's specific proposal. In *Dhanasar*, we gave significant weight to "probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests" and "detailed expert letters describing U.S. Government interest" in Dr. Dhanasar's specific research. *Id.* at 892. However, the Petitioner has not provided similar evidence, such as the type of expert opinion evidence or letters from government entities detailing how her specific endeavor impacts a matter that is a subject of national initiatives. None of the articles and reports specifically mention the Petitioner's endeavor or discuss the government's interest in promoting the use of the Petitioner's innovation or solutions.

The Petitioner asserted that her endeavor will "provide companies with tools to adequately monitor and control the occupational health of workers" and "contribute to advancements in the field through generating statistical reports, plans, and programs to used as inputs for research in the field of public and occupational health." But the Petitioner has not suggested that her solutions or methodologies somehow differ from or improve upon those already available and in use in the United States, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." The Petitioner provided an example of her audit process created for [redacted] in 2014,[4] but the record does not offer any supporting evidence as how such audit model or process has a broad impact in the field. The accompanying reference letters from the Petitioner's former work colleagues generally praised her skills and accomplishments as a contract health auditor in Colombia but do not discuss the Petitioner's future endeavor or special methodologies attributable to the Petitioner that would have broad impact rising to the level of national importance.

The Petitioner further contends that the Director erred by overemphasizing the geographical scale of her endeavor. Although we agree with the Petitioner that the impact outlined in the *Dhanasar* "does not focus solely on a geographical scale," the Petitioner has not provided persuasive examples where the Director overemphasized the endeavor's geographical scope in the decision. In *Dhanasar*, we noted 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" or "[e]ven ventures and undertakings that have as their focus one geographical area of the United States" may be considered to have national importance. *Id.* at 889-90. Therefore, the Director's statement that "the Petitioner has not shown . . . benefits to the regional or national economy" to the level of "substantial positive economic effects" aligns with the *Dhanasar*'s analytical framework and does not constitute, as claimed by the Petitioner, as "an abuse of discretion" or "a novel criterion."

The Petitioner also claims that the Director erroneously relied "on the number of employees and the salary they will receive" without explaining "a degree of payment or a degree of workers to be hired is a number to be considered as a baseline." As the Petitioner noted, the words like "significant" and "substantial" are not defined in *Dhanasar*, but we are not persuaded by the Petitioner's claim that hiring seventeen U.S. workers is "more than enough to meet the plain language of the criterion when

[4] The Petitioner submitted a resume indicating that she worked for [redacted] as an audit professional from January 2012 to July 2014 in Colombia.

coupled with the ample projection-based evidence provided in the record with respect to the likelihood of said employment of US workers." The Petitioner has not offered independent and corroborating evidence to support the basis of the financial and staffing projections in her business plan. While the metrics in the business plan indicate that the Petitioner's company has growth potential, the record lacks objective evidence to demonstrate that the benefits to the regional or national economy resulting from her business would have "significant potential to employ U.S. workers" or reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Any basic economic activity has the potential to positively impact the economy; however, the Petitioner has not offered a sufficiently direct connection between her proposed endeavor's activities and any demonstratable substantial economic activities. 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. *Dhanasar,* 26 I&N Dec. at 893. Similarly, we find that the Petitioner has not established her proposed endeavor in this case will sufficiently extend beyond her clientele and employees to affect the regional or national economy more broadly.

Finally, the Petitioner asserts that "none of the evidence particularly submitted for this prong was analyzed but generally referred to and disregarded without adequate grounds." However, we find that the Director has acknowledged and analyzed various documents on record but concluded overall that the quality of the evidence lacked probative value in supporting national importance of the endeavor. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *see also Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Based on the foregoing, we conclude that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the issue of her eligibility under the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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 find that she has not established eligibility for 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.