U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31112039

Date: JUL. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial officer, 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 that the record did not establish that the proposed endeavor was of national importance, that the Petitioner was well-positioned to advance the proposed endeavor, or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. 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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

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

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance

The first prong, 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.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner's business plan states that her proposed endeavor is to work as the chief financial officer of [redacted] a consulting company providing "supply chain advisory services to mining, manufacturing, and oil and gas businesses throughout the U.S., also supplying these businesses with mining consumables and ground support items, safety materials, and more."

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." *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. 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. 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. 26 I&N Dec. at 893.

[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).

Here, the Petitioner has not described how her employment as the chief financial officer for her company will have a broader impact on the field of logistics. The Petitioner argues on appeal that her proposed work is nationally important because her proposed endeavor is "a multifaceted solution to national challenges" as it "addresses the shortage of financial managers, aligns with government initiatives, tackles supply chain issues, and emphasizes [the Petitioner's] ability to contribute positively to the U.S. economy and national welfare." However, these generalized statements neglect to sufficiently explain how the Petitioner's work as a financial officer for one company will have an impact extending beyond the company's consulting clients to the broader logistics and supply chain field on a nationally important level.

The record presented does not provide sufficient support for her arguments either.[2] To demonstrate the national importance of her endeavor the Petitioner submitted informational articles, a personal statement, two opinion letters, and a business plan. The articles the Petitioner submitted discuss logistics, the supply chain, and the role of chief financial officers broadly.[3] Additionally, the Petitioner submitted various government reports on varied topics, such as the Chief Financial Officers Act of 1990, the Federal Reserve's 2023 Annual Performance Plan, and initiatives to increase graduates in scientific and technical fields. These articles and reports are of little evidentiary value as they do not address the Petitioner's specific proposed endeavor or how it would have broad implications in the logistics and supply chain field in a way that implicates national importance.

Within the personal statement, the Petitioner claims that her endeavor will contribute to the "promotion of equitable economic growth, recovery, and the enhancement of wellbeing and the welfare on the general population." She claims that by serving as the chief financial officer for her company, she will "tend to the nation's crises and promote the public's welfare and quality of life" and "provide substantial positive economic effects to the United States." Contentions require support to underpin them, as assertions themselves do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). In arguing that the endeavor is nationally important the Petitioner's statement focuses on her background, the job responsibilities she intends to perform, the importance of the logistics and supply chain field, and the general need for experienced financial executives in the country. The statement does not explain how the Petitioner's position as the chief financial officer for this company in particular will have an impact in a nationally important fashion. Moreover, as noted above, our focus is not the importance of the logistics, supply chain, or finance fields in which the Petitioner will work. Our analysis of national importance concentrates on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889.

The Petitioner also provided two opinion letters from Dr. [redacted] and Dr. [redacted] professors at [redacted] and [redacted] respectively. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Still, we will reject an opinion or give it less weight if it is not in accord

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

[3] We observe that several of the articles submitted were published after petition's filing. A petitioner must meet all the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(l), (12).

with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*

Here the advisory opinions are of little probative value. First, Dr. [redacted] letter lacks explanation and analysis to show how the proposed endeavor is nationally important. The letter's discussion of national importance begins by explaining the company's functions and the Petitioner's role, and then provides an account of the importance of financial managers and the finance field. He then summarily concludes from the importance of these fields that her proposed endeavor is nationally important. This conclusion ignores the requirements of *Dhanasar*. It is not the importance of the field that determines an endeavor's national importance, but rather how the specific endeavor will impact the field on a level commensurate with national importance. *See Dhanasar*, 26 I&N Dec. at 889.

Next, Dr. [redacted] letter determines that the Petitioner will have "a cascading effect on the economy's growth," fulfill the country's need for knowledgeable workers, and "can potentially impact…the broader supply chain and logistics industry." His evaluation of national interest primarily focuses on a general explanation of the job responsibilities the Petitioner will undertake and the importance of good financial management and the logistics field. From there, he generalizes that as the Petitioner will be a good financial executive in an important field, she will have the various impacts noted above. This conclusion lacks sufficient analytical support, and it conflates the field's importance with the endeavor's importance. He neglects to explain how the specific proposed endeavor impacts the field beyond the individual companies the Petitioner would partner with or how her endeavor would have an economic impact on par with national importance. *See Dhanasar*, 26 I&N Dec. at 889-90.

Furthermore, the Petitioner has not demonstrated that her endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Dhanasar*, 26 I&N Dec. at 890. Here, however, the business plan does not adequately support its projections of job and revenue creation.

The Petitioner's business plan anticipates that the Petitioner's company will reach a total of 13 employees in year five. It also projected generating $40,880 in net profit in year one, reaching $120,905 in year five. Nevertheless, the plan does not explain how these forecasts were calculated, or adequately clarify how these projections will be realized, nor does the record contain evidence to support the business plan's financial projections. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, the lack of supporting details detracts from the credibility and probative value of the business plan.

Moreover, even if we assumed all the projections in the business plan are accurate, the record lacks evidence demonstrating that the impact would be nationally important. The Petitioner's appeal brief states that the proposed endeavor is "linked with the field of supply chain management and that her work will positively impact American companies, which can ultimately benefit the national economy."

Yet the Petitioner did not provide documentation to support these statements that her work will result in substantial economic growth on the level of national importance. The record does not illustrate how creating 13 jobs and generating $120,905 in net profit by year five, as projected in the business plan, would have substantial positive economic effects on the level of national importance. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has therefore not provided sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rises to the level of national importance.

Accordingly, for the reasons given above, we conclude that the Petitioner has not established the national importance of the proposed endeavor, and therefore does not meet the first prong of the *Dhanasar* analytical framework. In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that her proposed endeavor will sufficiently extend beyond her partner companies to affect the region or nation more broadly. 26 I&N Dec. at 893. She has also not shown that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and the Petitioner has not demonstrated eligibility for a national interest waiver.

As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under 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 find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.