U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31569870

Date: JUL. 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in marketing consulting, 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 Petitioner is eligible for a waiver of the job offer requirement 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

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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] *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

Id.

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. The first prong of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance. We agree with the Director that the submitted documentation establishes the Petitioner's proposed endeavor has substantial merit. 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.

With respect to her proposed endeavor, the Petitioner stated in her definitive statement that she intends to "serve as a Marketing Manager/Entrepreneur by managing and operating my U.S. based company [redacted] The company will provide consulting in business intelligence and digital marketing strategy services focusing on small and mid-sized businesses in the U.S." In response to a request for evidence, she provided she "will utilize her marketing skills to promote products and advertise services of companies that will achieve significant cross-border sales for U.S. companies looking to grow abroad, as well as foreign companies looking to move and grow in the U.S." Additionally, she provided in her business plan that the company "will provide consulting in marketing management, business intelligence and digital marketing strategy services focusing on small and mid-sized businesses in the USA."

In addition to the above documents, the record includes, but is not limited to, articles and industry reports about marketing jobs and the role of immigrants in the workforce, and information from O*NET OnLine and the U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics related to marketing managers. Lastly, the record includes company records for [redacted] company portfolio samples, letters of intent from potential clients, letters of recommendation, education records, a resume, and immigration records.

The Director listed evidence submitted by the Petitioner and discussed details from her business plan. The Director noted that the company would be in [redacted] FL, which has a population of over 430,000. The Director further mentioned that the business plan references a projected number of 80 employees and a projected net income of $692,583 by year five, and it provides how the company would enhance other small to mid-sized companies through various means. However, the Director found that the Petitioner did not establish the potential to hire a significant number of employees, substantial positive economic effects, or that the benefits would extend beyond the company and its potential clients. The Director reviewed letters from companies intending to work with the Petitioner, but noted the benefits were to the companies rather than resulting in broad implications in the industry. The Director next discussed the letters of recommendation and also determined that they did not provide evidence that the proposed endeavor would have national importance. Finally, the Director noted the Petitioner did not provide sufficient evidence of the prospective endeavor's potential prospective impact, including

broader implications, or national or global implications within the field; significant potential to employ U.S. workers; substantial economic effects, particularly in an economically depressed field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, the Director concluded that the Petitioner did not establish the proposed endeavor is of national importance.

On appeal, the Petitioner argues that the Director erroneously imposed a stricter standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not specifically identify statements in the Director's decision applying a higher standard of proof or imposing novel substantive and evidentiary requirements beyond those set forth in the *Dhanasar* framework.

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 marketing consulting services to her company's future clients, 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. *Id.* 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, the marketing consulting industry, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner asserts that the Director did not provide a detailed analysis of the evidence she claims is related to national importance, including her business plan, resume, evidence of her work in the field, letters of recommendation, and industry reports and articles. We will address the previously submitted evidence in relation to the national importance of the proposed endeavor. The Petitioner's business plan includes 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. Regarding future staffing, the Petitioner's business plan anticipates that her company will employ 19 personnel in year one, 33 in year two, 49 in year three, 64 in in year four, and 80 in year five, but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while her plan offers revenue projections of $1,083,613 in year one, $1,882,065 in year two, $2,794,582 in year three, $3,650,066 in year four, and $4,562,582 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The Petitioner's resume and supporting documents reflect that she has been working since 1999 in numerous positions such as branch manager, marketing manager, marketing head, insurance commercial manager, marketing intern, and marketing director. The record also includes evidence of her educational degrees, certificates, additional courses, and letters from prior employers. The Petitioner's skills,

knowledge, and prior work in her field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The first prong of the *Dhanasar* framework, however, focuses on the proposed endeavor and not on the Petitioner's education and prior work in the field. The national importance of the Petitioner's proposed endeavor stands separate and apart from her education, skills, and job experience.[2]

The Petitioner previously submitted articles and industry reports about marketing jobs and the role of immigrants in the workforce, and information from O*NET OnLine and the U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics related to marketing managers. She asserts that the articles demonstrate the national importance of the proposed endeavor. The issue here is not the national importance of the field, industry, or profession in which the individual will work; rather we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner also contends that there is an impending shortage of marketing professionals in the United States, and she would be able to immediately contribute to the United States with her extensive experience. However, the alleged shortage of occupations or occupational skills does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner claims that there are broader implications from the proposed endeavor, as the services offered have the potential to transform digital marketing strategies for U.S. companies at a national level. The Petitioner, however, has not provided sufficient evidence demonstrating that her marketing consulting business 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 field or to generate substantial positive economic effects in the region where her company will operate or in other parts of the United States.

Furthermore, the Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not demonstrated that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. 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*. *Id.* at 890.

The Petitioner has not established that she meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, she has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate

[2] *See Dhanasar* at 890.

arguments regarding her eligibility under the third prong outlined in *Dhanasar*.[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

ORDER: The appeal is dismissed.

[3] The Director determined that the Petitioner is well positioned to advance the proposed endeavor, which is the second prong outlined in *Dhanasar*. We will not address whether we agree with this finding as the determination that the proposed endeavor lacks national importance is dispositive of the appeal.