U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31720864

Date: JULY 10, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a legal consultant, 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, concluding that although the Petitioner was eligible for the EB-2 classification as an advanced degree professional, she did not establish that a waiver of the job offer requirement would be in the national interest. 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 the EB-2 immigrant 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

II. ANALYSIS

The Director determined that the Petitioner qualified for the EB-2 classification as an advanced degree professional, and the record supports this determination.[2] The Director also found that the Petitioner's proposed endeavor had substantial merit. The remaining issues, therefore, are whether the Petitioner has established that her endeavor has national importance and, if so, whether she is well-positioned to advance it and whether, on balance, waiving the job requirement in her case would benefit the United States.

Upon review, we conclude that the Petitioner has not met her burden of proof to establish that her proposed endeavor has national importance. Because she is ineligible for a national interest waiver on that basis alone, we will not address whether she meets the other two *Dhanasar* prongs.

The Petitioner initially indicated that her proposed endeavor is to work as a legal consultant and "provide specialized services in logistics and infrastructure, banking, insurance, and real estate to impact legal management through innovation in the [United States]." In response to the Director's request for evidence (RFE) the Petitioner elaborated that she "plan[ned] to embark on a dynamic endeavor as a legal consultant, specializing in civil and international private law, as well as social contributions assisting needy individuals, with the primary objective of making a substantial impact in the field of legal consultancy in the United States." She further explained that she would focus on international contracts, in particular, and would "provide essential support to American companies seeking to enter and operate in the Brazilian market," ensuring that "contracts between the United States and Latin American entities [were] strategically advantageous to U.S. interests and fully compliant with international laws and regulations." With regard to the endeavor's national importance, the Petitioner stated that it had national and global implications, as well as significant potential to employ U.S. workers and enhance societal welfare, and that her efforts therefore would contribute to the overall well-being, stability, and long-term prosperity of the country.

The Director determined that the Petitioner did not establish her endeavor's national importance, noting insufficiency of evidence to show that her work would impact the field of law on a broader level, beyond the impact it would have on her clients or local community. The Director explained that although the updated professional plan the Petitioner submitted in response to the RFE provided more insight into her proposed endeavor, it did not indicate that her work as a legal consultant would have national or global implications within the legal industry, or that it would have substantial positive economic effects. The Director further found that an expert opinion addressing the Petitioner's "commitment to improving the qualifications of legal sector," online articles, and her website materials were insufficient to show that her activities would have broader implications rising to the level of national importance, because they did not provide information about her specific endeavor. The

[2] The record reflects that in 2012 the Petitioner obtained a bachelor of law degree in Brazil and has at least five years of progressive experience in the specialty, as required under the regulation at 8 C.F.R. § 204.5(k)(2).

Director acknowledged the Petitioner's counsel's statement that her proposed undertaking was "essential for safeguarding U.S. interests, fostering international cooperation, and ensuring the nation's strong presence in the global legal landscape," but found that it was not substantiated in the record with independent evidence.

On appeal, the Petitioner states that the Director's decision contains numerous erroneous conclusions of both law and fact. She reasserts, referencing her RFE response, that her proposed endeavor has national importance because of its potential to influence specific industries and its far-reaching impact on fundamental aspects of the legal industry. The Petitioner emphasizes that her innovative approach as a legal consultant encompasses groundbreaking strategies in logistics and infrastructure, banking, insurance, and relocation of vulnerable populations, which will assure transformative impacts on the U.S. legal sector. She reiterates that U.S. businesses face a substantial annual burden in regulatory compliance costs and her proposed initiatives, including introduction of AI-driven jurimetrics to navigate intricate legal landscapes have the potential to alleviate these costs in the legal sector. She further states that her focus on stringent compliance and fraud prevention in the banking and insurance systems, as well as increased international activities resulting from streamlined cross-border banking transactions not only align with the government's efforts to ensure financial sector's stability but can also contribute to the government's broader goal of fostering economic growth and international trade. Lastly, she states that through the potential enhanced operational effectiveness of legal practices inspired by her initiatives, the legal field can emerge as a critical driver of economic growth and could foster job creation.

As an initial matter, we acknowledge the Petitioner's general assertions that the Director erred in evaluating her proposed endeavor "by not comprehensively recognizing the far-reaching impact of her services" and by failing to "fully grasp the potential systemic influence her endeavor could exert on various industries and the transformative role it could play in fostering growth and bolstering competitiveness on a national scale." However, as she does not provide specific examples of factual or legal errors in the Director's analysis of the evidence, as it relates to the endeavor's national importance, we are unable to meaningfully address these assertions.

In determining whether an endeavor has national importance, we consider its potential prospective impact and "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. An 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. *Id.* An endeavor may also be of national importance if it has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id. at* 890.

Thus, 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 as a legal consultant. We have reviewed the previously provided evidence[3] and agree with the Director that it is inadequate to show that the Petitioner's proposed undertaking meets this requirement. While the Petitioner's statements in her updated professional plan indicate that she intends to work in California providing services as an international legal consultant in various areas of the law, the

[3] The Petitioner does not submit any additional evidence on appeal and references her RFE response instead.

evidence she has offered is not sufficient to demonstrate that the prospective impact of her work in this capacity will rise to the level of national importance. Specifically, neither the updated business plan, nor the reference and expert opinion letters attesting to the Petitioner's knowledge of law and professional achievements include details about her proposed endeavor. Similarly, while the Petitioner's online publications discuss digital transformation, personal data processing, and alternative conflict resolution, they do not address her proposed undertaking. *See Dhanasar*, 26 I&N Dec. at 889 (stating that in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work but "the specific endeavor that the foreign national proposes to undertake.").

The Petitioner also has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or will otherwise result in substantial positive economic effects for the United States. Although she indicates on appeal that her "initiative can shape the legal landscape, foster economic growth, create jobs, and contribute to the overall welfare of society" she does not specifically explain how her work as a legal consultant might lead to employment of U.S. workers or bring about other substantial positive economic effects, particularly in an economically depressed area.

Based on the above, we conclude that the Petitioner has not met her burden of proof to establish that her proposed endeavor has national importance, as required under the first prong of the *Dhanasar* analytical framework. Because she is ineligible for a national interest waiver on that basis alone, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding *Dhanasar's* second and third prongs. *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).

ORDER: The appeal is dismissed.