U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31283199

Date: JUL. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial services and accounting 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 that the record did not establish that the Petitioner's proposed endeavor had prospective national importance, that she was well-positioned to carry out the proposed endeavor, or that a waiver of the labor certification requirement was beneficial. 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," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

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.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Petitioner is a financial management consultant and accountant who intends to continue her career in this field by opening and operating a financial consulting firm. She notes that she will assist U.S. companies to make sound financial decisions, offer advice to streamline their operations, improve productivity, and aid in expansion efforts in Latin America.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that the national importance of the endeavor had not been demonstrated under prong one, that the Petitioner was not well positioned to carry out the endeavor under prong two, or that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Hot Demonstrated that Her Endeavor Has National Importance

On appeal, the Petitioner argues she has satisfied prong one of the *Dhanasar* framework because the Director did not properly weigh the evidence. She contends that the Director did not appropriately evaluate the record using the preponderance of the evidence standard but instead used a novel standard. She highlights her history of success in similar endeavors, and notes that the proposed endeavor could broadly impact the financial sector. She contends that the Director failed to adequately consider her business plan, work experience and credentials, letters of support, and the supporting documentation outlining the impact of the financial industry. The Petitioner argues that her endeavor will have direct economic impacts as well as ripple effects of national importance.

In support of these contentions, the Petitioner has submitted evidence including, but not limited to: a business plan detailing her intention to open three financial consulting offices over a period of five years; a professional plan; letters of support from sources including colleagues, professors, and supervisors; diplomas, transcripts, and certificates; employment history; an expert opinion regarding her eligibility for a national interest waiver; and articles providing context and background on the financial services industry, the accounting industry, and the impact of immigrant entrepreneurs on the U.S. economy.

The Petitioner has not satisfied the first prong of the *Dhanasar* framework requiring a proposed endeavor to be of national importance. Although the Petitioner stresses that the proposed endeavor is likely to be successful given her extensive work experience, and will create employment opportunities, these factors are not sufficient to show national importance. 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. Although the evidence reflects the Petitioner's intention to provide valuable services for her 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 find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her clientele to impact the financial services industry, the accounting industry, or otherwise impact economic initiatives more broadly at a level commensurate with national importance.[2]

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. Specifically, she has not shown that her company's future staffing levels, business activity, associated tax revenue, and financial initiatives stand to provide substantial economic benefits in Massachusetts, in the states where expansion is contemplated, or in the United States generally. While the business plan indicates that the company has growth potential, it does not demonstrate 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. In addition, although the Petitioner asserts that the company will hire U.S. employees and that Massachusetts is economically

[2] The Petitioner has provided, and we have reviewed, a substantial number of documents outlining the importance of the financial services sector to the national and global economy. However, the *Dhanasar* framework instructs us to evaluate the impact of the specific proposed endeavor, rather than the field or industry generally. *Id.* at 889.

distressed, she has not offered sufficient evidence that she would employ a significant population of workers in that area, or that the endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Moreover, while the Petitioner contends that the proposed endeavor will expand to multiple offices over five years, she has not shown that the business services performed by the company would represent a significant share of the financial services or accounting market. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

The Petitioner has also not demonstrated that the Director violated USCIS policy or erroneously evaluated the case. The Petitioner takes issue with the Director's weighing of the evidence, but she has not provided details of which "novel standard" the Director purportedly applied. Similarly, although she alleges that the Director failed to correctly consider various pieces of evidence, she has not provided details of how the Director's analysis misevaluated this evidence.

Because the documentation in the record does not establish the national importance of the proposed endeavor, as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. *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 alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because she has not met the 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.