U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28538808

Date: JUL. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a compliance manager, 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 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 determined that the Petitioner qualifies as a member of the professions holding an advanced degree, but she did not establish that her proposed endeavor has national importance as required to establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we conclude that the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.

On appeal, the Petitioner alleges that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in regulations." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts on appeal that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify any specific instance in which the Director applied requirements or a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner further argues the Director "did not give due regard to" certain pieces of evidence, including: her resume, her business plan and personal statement, evidence of her work in the field, letters of recommendation, and industry reports and articles. However, the Director noted that their decision was the result of "a review of the petition and all of the supporting evidence." Additionally, we have reviewed the entirety of the record de novo in rendering our decision on the Petitioner's appeal.

The Director determined that the Petitioner did not establish that her proposed endeavor met the national importance element of the first prong of the *Dhanasar* framework. 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 Petitioner's proposed endeavor appears to involve working as a "compliance manager" within the financial field in the United States. In the professional plan submitted with her Form I-140, the Petitioner stated her proposed endeavor would "be to continue offering my expertise to help combat critical issues that are of national concern, like money laundering and terrorist financing." Specifically, she proposed she would work as a "Compliance Manager for financial institutions in the

United States." We acknowledge the various documents the Petitioner provided regarding compliance and financial issues and related fields. However, when determining whether a proposed endeavor would have substantial merit or national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Id.* at 889-890. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation.") Simply being employed in an occupation does not constitute an endeavor for the purposes of these proceedings. *Dhanasar*, 26 I&N Dec. at 889-890.

The Director issued a request for evidence (RFE), requesting a detailed description of the proposed endeavor and documentary evidence to support the claim of national importance. In response to the Director's RFE, the Petitioner submitted documents, including a business plan that was filed after the Petitioner filed her Form I-140, outlining a different goal that she intends to pursue which involves growing a company in the United States, focusing on "providing specialized consultancy and training focused on AML [(anti-money laundering)] compliance to U.S. companies and businesses needing secure, reliable, trustworthy safety in their financial operations and transactions within the U.S. market."[2] The Petitioner proposed she would leverage her "years of experience with financial compliance and regulations sector" to "generate more jobs for U.S. workers, as well as significant and profitable opportunities for the national economy." Specifically, the Petitioner intends to serve as an investor in and CEO of the company. Towards that end she will: "determin[e] and formulat[e] policies and provide overall direction of the company within the guidelines set up by a board of directors or similar governing body, planning or coordinating operational activities at the highest level of management with subordinate executives and staff managers."

The Petitioner has not provided information sufficient to illustrate how she will realize her goal of offering her expertise to companies in the United States or how she will be engaged as a Compliance Manager by U.S. companies. She has also not described how she will apportion her time between working as a Compliance Manager and working as a CEO of her proposed company. Nor has she detailed whether she will focus on one of these activities instead of the other. The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies.

Without more information about her specific proposed endeavor and how she will apply her knowledge and experience in the United States, the Petitioner has not sufficiently established her proposed endeavor for us to determine that her work in the United States will have national importance. In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether it has national importance under the *Dhanasar's* first prong. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The Petitioner has not done so here.

[2] A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12).

Even considering the evidence of her proposed endeavor as if it had been defined with sufficient specificity, we find no error in the Director's conclusion that she did not establish its national importance. The Director determined that the Petitioner did not establish that the proposed endeavor would have impact beyond a single employer, client, or project or demonstrate it would impact the compliance or finance industry more broadly. We have reviewed the Petitioner's business plan and agree with the Director's conclusion that the Petitioner did not establish her proposed endeavor would "have broader implications rising to the level of having national importance." Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her proposed endeavor would rise to the level of national importance. In her business plan, the Petitioner indicated her proposed company would generate 36 jobs and generate $1.5 million dollars in revenue in the first five years of business. However, the business plan does not provide sufficient explanation for the basis of these projections. Further, even if sufficient basis were provided for the proposed endeavor's revenue and job creation projections, these figures do not establish that the Petitioner's company would operate on a scale rising to the level of national importance. The Petitioner has not explained how her proposed employment metrics and revenue would impact her company's area of intended operations.

Finally, regarding the reports and articles about the Petitioner's industry, when determining the national importance of a proposed endeavor, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; rather, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* 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.* As discussed above, the Petitioner has not established her proposed endeavor with sufficient specificity such that we can determine if her work would have national importance when considering that endeavor, rather than the broader field of financial regulation and compliance.

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 conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.