U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30336058

Date: JULY 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is an Information Technology (IT) consultant who 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 (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner merits a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (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 establish eligibility for an NIW, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the 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 NIW petitions. Dhanasar states that USCIS may, as matter of discretion, grant an NIW 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.

Id.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

II. ANALYSIS

The Petitioner proposes to establish an IT consulting services business in an unspecified location in the United States. In addition, the Petitioner states that her "proposed endeavor is to help U.S. businesses achieve optimization and effectiveness through customized solutions, establishment of a strong IT infrastructure, and digital transformation."

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. Dhanasar, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. Id. For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify. Id.

In her decision, the Director determined that the Petitioner's proposed endeavor is of substantial merit, and we agree. Turning to the national importance of her endeavor, the Director concluded that the Petitioner did not establish that her proposed endeavor would have a broader impact on the IT field.

On appeal, the Petitioner contends that the Director failed to consider all of her proposed endeavor's broader implications as shown in her business plan, industry reports, articles, and government initiatives.[1] Her business plan claims that her endeavor supporting the IT industry will create jobs, however the business plan did not make any staffing and revenue projections. Rather, the petitioner claimed that her support of the IT industry will generate jobs in the IT sector. The business plan uses a multiplier published by the Information Technology & Innovation Foundation (ITIF) to assert that "for each job created in the local high-tech sector, approximately 4.4 jobs are created in the local non-tradable sector in the long run." Importantly however, these employment projections are not supported by details showing their basis or an explanation of how they will be realized, nor do they demonstrate how the Petitioner's proposed endeavor has significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the proposed endeavor's direct creation of any full-time jobs or that the expected revenue generated by the proposed endeavor will have a substantial economic benefit commensurate with national importance as contemplated by the first prong of the Dhanasar framework.

In addition, the business plan highlights the Petitioner's more than two decades of experience to establish the national importance of her proposed endeavor. However, the Petitioner's expertise and record of success in previous positions are considerations under Dhanasar's second prong, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of her proposed work.

[1] We acknowledge the Petitioner's assertion that there was a misplaced closing quotation mark in the Director's decision. However, this scrivener's error was not prejudicial.

Moreover, through industry reports and articles, the Petitioner emphasized the importance of the IT industry. We agree that the field of IT is important, and that success in the field may lead to greater economic advantages. However, 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 specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. 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. While the Petitioner proposes to work in an important industry or field, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor. Regardless, the articles and reports do not discuss any particulars of the Petitioner's proposed endeavor or its prospective impact rising to the level of national importance.

In Dhanasar, we determined 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. Likewise, the Petitioner has not established how providing her IT consulting services stands to sufficiently extend beyond her clients to impact the field more broadly at a level commensurate with national importance.

We also reviewed the September 2022 expert opinion letter from a university professor in the field of computer science, information systems, and cyber-security at [redacted] The author discusses the Petitioner's skills and abilities as an IT professional and speculates on how her services can potentially improve the IT sector and improve productivity of companies but does not offer any persuasive detail concerning the Petitioner's proposed endeavor or how her endeavor's impact would extend beyond the companies that she will serve. Further, USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Id., see also Matter of D-R-, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

III. CONCLUSION

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the Dhanasar framework, she is not eligible for a national interest waiver. Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the third Dhanasar prong.[2] See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally

[2] The Director found that the Petitioner met the second Dhanasar prong, being well-positioned to advance her proposed endeavor.

required to make findings and decisions unnecessary to the results they reach); see also Matter of D-L-S-, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). As such, the Petitioner has not overcome the Director's conclusion regarding this issue. The petition will remain denied.

ORDER: The appeal is dismissed.