U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31929428

Date: JUL. 18, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a marketing specialist, 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that the Petitioner was eligible for and merited a national interest waiver as a matter of discretion. 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:

- The proposed endeavor has both substantial merit and national importance;

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

*Id.*

## III. NATIONAL INTEREST WAIVER

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree as is required for the underlying EB-2 classification.[2] Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established under the *Dhanasar* framework that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong under the *Dhanasar* framework, relating to substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of 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.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

Initially, the Petitioner provided a personal statement wherein she stated that her proposed endeavor is to work as a marketing specialist in the areas of marketing, communication, user experience, and trade marketing. With regard to marketing, she claimed she will plan, implement, and monitor a company's marketing strategy to increase brand awareness, improve marketing efforts, and increase sales. As for communication, she stated she will play a vital role in developing effective strategies and delivering impactful messages to various stakeholders which in turn provides significant benefits to an organization. In the area of user experience, she claimed she will create exceptional experiences for customers and users that will also provide significant benefits to an organization. Finally, regarding trade marketing, she claimed she will collaborate with consumer-goods industries to develop promotional campaigns. She asserted that large companies already have marketing professionals that are qualified and well-structured and therefore she will work with small and medium-sized companies to impact their profitability, customer portfolio, and business growth. She added that she also aims to improve generally the qualifications of marketing professionals in the United States through training, mentoring, and motivation.

The Petitioner also submitted an expert opinion letter stating that the Petitioner's proposed endeavor involves providing innovative marketing solutions and segmented marketing techniques to U.S. companies as a marketing specialist. The letter further adds that the Petitioner will provide marketing services for U.S. companies, ultimately generating revenue, increasing productivity and profitability, and creating employment opportunities.

In response to a request for evidence, the Petitioner provided a professional plan wherein she stated her proposed endeavor was to work as a marketing specialist in product marketing, marketing and

[2] Because the Director determined the Petitioner is eligible for classification as a member of the professions possessing an advanced degree, the decision does not evaluate the Petitioner's alternative claim that she also qualifies for EB-2 classification as an individual of exceptional ability.

customer experience, and lecturing and mentoring, focusing initially on the telecommunications and information technology industries. She describes the marketing strategies and services she intends to implement as a marketing specialist, including developing and implementing marketing strategies, establishing innovation laboratories and projects, identifying strategic partnerships, and lecturing and mentoring students and marketing professionals. She also specifically proposes to develop connectivity solutions in the medical field and study strategies and products that benefit low-income individuals or those in hard-to-reach areas for medical services, thereby democratizing access to primary healthcare for the low-income populations in urban and rural areas. Overall, she describes that the proposed endeavor aims to "promote economic growth and job creation within the company where [she] will operate...."

The Director acknowledged that the Petitioner's proposed endeavor had substantial merit. We agree. However, the Director concluded that the Petitioner did not submit sufficient evidence to establish that the proposed endeavor is of national importance. The Director acknowledged the Petitioner's passion for the marketing field and her role as a marketing specialist but concluded that the evidence did not establish that her specific goals and methodologies would impact the marketing industry or U.S. economy at a level commensurate with national importance. After considering the evidence, we agree that the Petitioner has not established her proposed endeavor is of national importance.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. In *Dhanasar*, we further stated that we consider the proposed endeavor's "potential prospective impact," and "look for broader implications" noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Further, "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

While we acknowledge the Petitioner's education and experience in the field of marketing and the overall impact marketing and healthcare have on the economy of the United States, as noted above, our focus is on the specific endeavor that the Petitioner proposes to undertake rather than the importance of the industry or profession in which the individual will work. *See id.* Here, the Petitioner has not offered sufficient information and evidence to establish the services she intends to provide as a marketing specialist would extend beyond the specific company or organization she is employed by.

Furthermore, while the Petitioner intends to implement certain marketing methodologies to develop marketing strategies, and otherwise generally proposes to establish innovation laboratories, identify strategic partnerships, and offer lecturing and mentoring, she has not sufficiently explained or demonstrated how these undertakings offer original innovations to advance, or otherwise have broader implications in, the field of marketing or are at a level that would have national implications in the marketing field. We note, for instance, that in an expert opinion letter written by a professor of marketing, the expert claims the Petitioner will "[i]mplement innovative marketing solutions for United States companies," and identifies the methodology that the Petitioner claims she developed. However, beyond naming the methodology, the expert speaks primarily about the importance of marketing in general and does not discuss how the methodology is or has been innovative nor does

she provide any specific information on whether the methodology has been adopted academically or to what degree, if any, it has been incorporated into or contributed to the marketing field. Similarly, a reference letter provided by the Petitioner suggests the writer has applied the techniques from the Petitioner's book at their agency and that "[i]t is clear that the work developed by [the Petitioner] has gained national prominence and recognition." However, the statement lacks sufficient corroborative detail and probative weight to establish the methodology has broader implications in the field of marketing.

Finally, the Petitioner claims that her proposed endeavor would impact social welfare and job creation, primarily through innovation laboratories, collaborations with startup and small to medium-sized enterprises, and connectivity solutions in the medical field. However, beyond these generalized assertions, the record lacks sufficient evidence to substantiate the overall prospective impact of these undertakings and therefore is insufficient to establish her proposed endeavor as a marketing specialist has *significant* potential to employ U.S. workers or has other *substantial* positive economic effects. *Id.* Accordingly, we find the Petitioner has not established that her proposed endeavor is nationally important.

## III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, requiring that she demonstrate her proposed endeavor is nationally important. We therefore conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The Director also concluded that the Petitioner did not establish she was well positioned to advance her proposed endeavor, or that on balance it would not be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. While the Petitioner also contests these conclusions on appeal, because our determination that the Petitioner's proposed endeavor is not nationally important is dispositive of her appeal, we decline to reach and hereby reserve the appellate arguments on these issues. *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.