U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30336052

Date: JUL. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a Human Resources professional and Entrepreneur, 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 merits a discretionary waiver of the job offer and labor certification requirements for EB-2 classification. 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 Petitioner, a citizen and national of Brazil currently residing in the United States, seeks a waiver off the job offer and labor certification requirements of EB-2 classification based on her proposed endeavor of starting a human resources (HR) consulting agency. The Director determined that the Petitioner qualified as a professional with an advanced degree, so the sole issue on appeal is whether the Petitioner has established eligibility for a waiver in the exercise of discretion.

A. The Proposed Endeavor

The Petitioner proposes to create [redacted] a human resources consultancy organization, in [redacted] The business plan provided to the director indicates she intends to leverage her experience as a human resources professional to create her own company providing consulting services to organizations and individuals. Specifically, she states:

> The company will primarily be a Human Resources consulting company. The company will cater to small and medium-sized companies in the U.S. It will specialize in providing advisory and implementation activities related to the management of an organization's human capital and the HR function. The services range from Human Capital strategy, Compensation & benefits, Organizational change, HR Function, Talent Management, HR Analytics, Learning & Development and HR Technology.

The business plan goes on to state that it will have a business to business model and be headquartered in [redacted], Pennsylvania, a qualified HUBZone, and open two additional offices in [redacted] New Jersey and [redacted] Maryland within 5 years of operation.

B. Substantial Merit and National Importance

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. *Id.* at 889.

The Petitioner provided the Director with a business plan, brief, resume, news articles related to human resources, letters of support, and expert opinion letters. The Director determined that the Petitioner had not established her eligibility under any of the three prongs of the *Dhanasar* framework and issued a request for evidence (RFE). In response to the RFE the petitioner provided a new brief, additional letters of support, evidence of the Petitioner's membership and awards, and additional industry

information. The Director determined that the Petitioner had not established any of the three prongs of the *Dhanasar* framework and denied the petition.

On appeal, the Petitioner contends that the Director "did not apply the proper standard of proof ..., instead imposing a stricter standard, and erroneously applied the law ...." (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's resume outlining her experience; the business plan describing her credentials and the projected benefits she offers the United States; letters of recommendation; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals in her field.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

The Petitioner stresses on appeal her nine years of professional experience to argue that "a professional of (my) caliber can contribute to the U.S. economy, regardless of labor certification." The Petitioner provided an expert opinion letter from V-L-, a [redacted] professor, titled "analysis of positional requirements for National Interest Waiver." The letter highlights the petitioner's qualifications and reiterates the claims made in her business plan. The letter makes general assertions regarding the Petitioner's endeavor to improve the operations of small to medium sized enterprises without identifying a specific enterprise or how the petitioner's products will improve existing HR resources for a specific organization. The letter asserts that the Petitioner's past experience and professional accomplishments would make her invaluable to any organization. However, the Petitioner's reliance on her professional experience and professional achievements to establish the national importance of her proposed endeavor is misplaced. Her professional experience relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N 3 Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar* 's first prong.

The Petitioner argues on appeal that she will create value for U.S. organizations through "improved performance, achieved by providing objective advice regarding the optimization of business processes using respected industry methodologies" and "implementing effective HR development and strategic planning." The record includes the Petitioner's statement and a business plan which argue that her proposed endeavor has national importance based on potential economic benefits to underutilized business areas of Pennsylvania, New Jersey, Maryland, and to the United States. The Petitioner states her business would generate jobs for U.S. workers in these underutilized areas, improve wages and working conditions for U.S. workers, help the local community attract investments to the region, and encourage economic development. The Petitioner asserts that her entrepreneurial endeavor is particularly important given the role of small businesses in the U.S. recovery from the COVID-19 pandemic. The business plan also explains the Petitioner's experience and investment in the business;

its intended location and expansion plans; market overview of the human resources industry; benefits of the human resources industry for U.S. businesses; the business' services of retention planning and management consultancy, recruitment, and career advice and engagement monitoring; and the business' projected marketing strategy, staffing, and financial calculations.

While we acknowledge the Petitioner's claims, she has not provided sufficient evidence to substantiate them. She has not identified any specific human resources consulting engagements for which she plans to offer services nor has she offered evidence of a direct connection between her human resources consulting services and a boost in her client's product or services sales. As such, she has not demonstrated that any of those potential sales are of such a magnitude as to affect a particular industry, jobs, or the U.S. economy. Further, the Petitioner has not shown that the benefits to the regional or national economy resulting from her human resources consulting work would result in substantial positive effects.

The Petitioner's financial and staffing projections in the business plan and other supporting documentation are contradictory. In her initial business plan, the Petitioner indicated she would create 16 full-time positions, 74 part-time positions and 14 contractor positions within the first five years of operation. However, in response to the RFE, the Petitioner's brief indicated she would create "13 direct jobs" without regard to whether they were full-time, part-time or contracted. There was no explanation for the change in the number of jobs created or the potential impacts to the salary and revenue projections offered in the initial business plan. The Petitioner makes no reference to the number of jobs created or revenue generated on appeal but refers more broadly to the economic impacts of HR consulting.

As stated above, the Petitioner's initial business plan clearly identified her proposed endeavor as a business to business operation. On appeal, the Petitioner argues that her "proposed endeavor explicitly states its intention to promote economic development by serving both businesses and individuals throughout the country." There was no expansion on the services the Petitioner proposed to provide to individuals in the appeal brief. Lastly, the Petitioner has held throughout her briefs and other documents that she would be the primary shareholder and owner of the company, yet, her business plan indicates that her spouse would own 90% of the shares of the company while she would own 10%. These inconsistencies cast doubt on the Petitioner's assertions regarding the economic effects of her business and her position within it.

The Petitioner has not sufficiently documented the potential prospective impact of her proposed endeavor, including the asserted economic benefits to the United States and the areas it intends to serve. The Petitioner has documented the growth of the human resources industry as a whole and provided articles and industry reports to support her assertions. However, the growth and importance of an industry is not sufficient to meet the national importance requirement under the *Dhanasar* framework. 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. *Id.* at 889. 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 the field more broadly. *Id.* at 893. Similarly, the record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of human resources, as contemplated by *Dhanasar*: "[a]n 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.* The evidence does not suggest that the Petitioner's human resources consulting business would impact the field more broadly.

The Petitioner has not provided corroborating evidence to support her claims that her business' activities stand to provide substantial economic benefits to underutilized business communities or the United States. Statements and claims alone are not sufficient to demonstrate her endeavor has the potential to provide economic benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as the owner of her human resources consulting business would impact the human resources field more broadly, rather than benefiting her business and her clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

In summary, the Petitioner has not specifically addressed the concerns of the Director, namely, that the business plan, revenue projections, and staffing models be supported by objective evidence. Based on the above, the Petitioner has not demonstrated that her proposed endeavor extends beyond her business and her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the owner of her proposed human resources consulting business offers the claimed innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed human resources consulting work and the claimed potential economic benefits.

C. The Remaining *Dhanasar* Prongs

Because the Petitioner does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, she has not demonstrated eligibility for a national interest waiver as a matter of discretion. The identified basis for denial is dispositive of the Petitioner's appeal, therefore we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments regarding the second and third prongs under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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

The Petitioner has not established the national importance of her proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, she has not demonstrated that she is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.