U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32430060

Date: JULY 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer 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 the Petitioner 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 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 demonstrates eligibility for the underlying 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

II. ANALYSIS

In her business plan submitted in response to the Director's request for evidence (RFE), the Petitioner states she will create and lead a limited liability company providing consulting and advisory services focused on the internationalization of business between Brazil and the United States. The Petitioner specifies the company will provide strategic planning, market analysis, advice on regulatory and legal issues, human resources consulting, contracts support, and training.

The Petitioner submitted evidence that she holds the equivalent of a United States bachelor's degree in law and has over five years of progressive experience in her specialty. She thus qualifies for EB-2 classification as a member of the professions holding an advanced degree pursuant to the regulation at 8 C.F.R. § 204.5(k)(2). The only issue on appeal is whether she qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

The first *Dhanasar* prong, 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.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of her proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that her proposed endeavor would have substantial positive economic effects and would sufficiently extend beyond its future clients to impact the industry more broadly at a level commensurate with national importance.

On appeal, the Petitioner asserts her company will profoundly impact the United States economy and claims the company will employ a significant number of American workers. In her business plan submitted in response to the RFE, the Petitioner states the company will employ six other individuals. On appeal she explains the company will be located in Florida, "one of the largest economies in the United States." The Petitioner does not indicate that her company will operate in an economically depressed area, and she has not established that the projected employment of six people demonstrates significant potential to employ U.S. workers. *See id.* at 890 (discussing significant potential to employ United States workers as indicative of national importance).

The Petitioner also claims her company will contribute indirectly to the American economy through the generation of indirect jobs and payment of taxes. The Petitioner did not specify how her company would indirectly generate jobs. In her business plan submitted in response to the RFE, the Petitioner estimated tax payments of seven percent of total costs each month but did not explain how this estimate was made or how the percentage compares to tax payments of other similar businesses. In her business plan submitted initially, the Petitioner estimated her company would earn a net profit of $21,123 in the first year, which would decrease to $4,987 in the third year. In her business plan submitted in response to the RFE, the Petitioner includes a chart titled "Table Summary of the Economic, Financial and Social Results" which lists $1,036,800 for the first year, increasing to $1,183,389 in the fifth year. This business plan does not specify how these amounts were calculated, and the Petitioner does not explain the different financial projections between her two business plans. Regardless of any discrepancy between the Petitioner's business plans, the Petitioner has not established that her company's projected tax payments and net profits would have substantial positive economic effects of national importance. *See id.* (discussing substantial positive economic effects as indicative of national importance).

The Petitioner further asserts her proposed endeavor has national importance because the international expansion of business has significant benefits for the United States economy and is aligned with government policies aimed at economic expansion and global competitiveness. The Petitioner claims her company will be a "crucial vector" for the national economy through the promotion of international trade and strengthening of bilateral relations with Brazil. The Petitioner submitted articles on international trade and investment, the global management consulting services market, and the growing need for companies to internationalize. While these articles discuss the significance of international trade and consulting, our assessment of national importance does not focus on the importance of a field or industry in general. Instead, our assessment "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner, or otherwise address the potential prospective impact of her proposed endeavor.

The Petitioner claims her company's transmission of specialized knowledge in the business internationalization sector is fundamental to the development of resilient and adaptive business strategies and will foster innovation and competitiveness in the global market. The Petitioner does not specify the specialized knowledge that her company would impart or indicate that her company has or will develop strategies that would extend beyond its clientele to have national or even global implications for business internationalization. *See id.* at 889 (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field).

The Petitioner further claims her company's comprehensive training will "enrich the local job market with specialized skills and advanced knowledge" and "promote a broader positive economic impact." The Petitioner has not shown, however, that her company's training programs would extend beyond individual trainees to impact her field more broadly. *See id.* at 889 (explaining "we look for broader implications"). 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, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond its clientele to impact business internationalization more broadly at a level commensurate with national importance.

The Petitioner has not established that her proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within her field, or has other broad implications demonstrating national importance.

B. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of her specific proposed endeavor and she does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of her eligibility under the second and third prongs of 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

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.