U.S. Citizenship and Immigration Services

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

In Re: 31522442

Date: JUL. 22, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a marketing and advertising consultant, 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 petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

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.

According to the Petitioner's statement provided with the initial filing, she intends to "promote the sales of the products and services of small businesses and startups" in the United States. She refers to professional experience of "applying digital marketing to small-sized companies, public institutions, and government entities" and indicates that with her "ability to converge across the boundaries of various marketing categories including branding, content, [and] performance" she will "enable American small businesses and startups [to] more easily access the global markets." The Petitioner plans to "establish a Digital Marketing Communication Platform (DMCP) which allows a targeted marketing through programmatic advertising using AI (Artificial Intelligence) technology in addition to developing creative content strategies to secure American and global consumers tailored to small and medium-sized businesses, family-based agricultural businesses, and freelancers in the U.S." The Petitioner also submitted articles and letters of recommendation in support of her eligibility.

The Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance and issued a request for evidence. In response, the Petitioner submitted additional documentation, to include an updated proposed endeavor statement, business plan, letters from [redacted] based in Korea and three U.S. entities expressing interest in working with the Petitioner, documents discussing U.S. government initiatives to support small and medium businesses, and additional information about the Petitioner's previous marketing and advertising projects.

The Petitioner indicated that her company would assist small business owners who need the "help of an expert to effectively utilize digital marketing" and to address this issue, she is "developing a programmatic advertising program that will make it easier for small business owners to access digital marketing, conduct effective advertising campaigns, and expand their market reach." The Petitioner noted that she will offer "localized advertising services for advertisers looking to expand overseas" and she is currently having discussions with "2-3 mid-sized companies in the United States to implement programmatic ads and localized advertising." She stated that "to execute this plan in the United States, [she has] received support from [redacted] the company [she works] for in

Korea" and she "will use the funding" to make "programmatic advertising service available in the United States." She indicated that she "plans to create jobs for content planning, AI big data, production[,] and media management."

In denying the petition, the Director concluded that though the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate the importance of the Petitioner's endeavor on a national scale. The Director noted that the record did not demonstrate the potential prospective impact of her endeavor would extend beyond her future company and clients. In addition, the Director found that due to a lack of sufficient evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the Petitioner did not establish that benefits to the regional or national economy resulting from her proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Regarding the submitted business plan, the Director indicated that it provides no insight on the financials and personnel of the proposed company and did not clarify how the Petitioner will pay for salaries and business expenses. The Director noted that the letters from companies reflecting an interest in working with the Petitioner did not include evidence of financial support.

On appeal, the Petitioner claims that the Director failed to take into account the true purpose of her endeavor and the substantial positive implications of the growth of small and medium businesses by expanding "their market to Asian region by using [the Petitioner's] service". She asserts that her proposed endeavor aims to support small and medium businesses and as they "expand their market and grow their business, they will hire more workers to process increased volume of business which will ultimately lead to growth of [the] national economy." The Petitioner contends that though the business plan did not contain financial details and projections, the submitted letter of commitment from [redacted] shows that she secured a funding source for her U.S. company. The Petitioner indicates that she did not yet form the proposed company due to a backlog in immigration processing and argues that "business formation, obtaining EIN (Employer Identification Number), and setting financial specifics at this point is not as important as establishing business model which includes expected hiring of experts" and how the proposed business can assist U.S. small and medium businesses.

Upon review, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether she had demonstrated, by a preponderance of the evidence, that she meets the first prong of the *Dhanasar* framework. In determining national importance, the relevant question is not the importance of the field, 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 Dhanasar*, *Id.* at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted articles addressing the importance of effective marketing, especially for small and medium businesses, and its impact on the U.S. economy, and provided recommendation letters and summaries of her past projects, describing her professional experience and accomplishments. However, the Petitioner's skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*'s first prong. Additionally, the documents failed to establish that the Petitioner's specific endeavor has national implications, significant potential to employ U.S. workers, or otherwise offers substantial positive economic effects for the United States.

We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and that "[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. Although the Petitioner discusses the value and importance of assisting businesses in improving their marketing and advertising abilities in a rapidly changing digital environment, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id.* at 889.

Further, the Petitioner did not demonstrate that her company's operations would provide substantial economic benefits to any specific region or the U.S. economy more broadly at a level commensurate with national importance, nor did she demonstrate that her company's activities would substantially impact job creation and economic growth, either regionally or nationally. The Petitioner acknowledges that she has not yet formed her proposed company nor has she determined the "financial specifics" of the company. Further, though the business plan indicates the Petitioner plans to "secure a local talent pool (minimum of 18 individuals)", she does not specify where the business will be located or the salaries for the employees. In addition, the record does not sufficiently show how the company will pay salaries and other business expenses. The Petitioner refers to the submitted letter of commitment from the Korean company [redacted] where she is currently the chief executive officer, and contends this shows that she secured a funding source for her U.S. company. However, the letter generally states that the company "will provide the necessary funding for all areas of business activities" without specifying the amount of committed invested funds. Further, the record lacks evidence demonstrating a contractual commitment to invest in the proposed company. Similarly, the emails from three U.S. entities that express interest in working with the Petitioner do not reflect investment funds from these companies or contractual commitments to work with the proposed company. Therefore, the Petitioner has not demonstrated that her future company has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make findings on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

**ORDER:** The appeal is dismissed.