U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31997191

Date: JUL. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 "start a financial consulting business" and states that her background and "extensive knowledge of different aspects of management and financial analysis has uniquely prepared" her for a continuation of her "very successful financial manager career in the United States." The Petitioner also submitted recommendation letters and documents related to her education and professional experience 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 a business plan, letters from individuals expressing interest in working with the Petitioner, documentation related to her membership with the Financial Management Association International, and articles discussing the importance of financial services.

According to the business plan, the Petitioner will implement "a project to create a financial app for self-education" called [redacted] which is also the name of her proposed company. The Petitioner indicated that she intends to launch her company in Florida and it "will provide financial services with a unique approach. Rather than following traditional methods, the company leverages AI-generated technologies to empower individuals and families residing in economically distressed communities." The proposed company "offers tailored financial guidance, facilitating better financial management, and connecting residents with essential resources" and "aims to assist its clients in learning experiences in the financial education sphere to help users become more financially literate and confident in managing their personal finances." The Petitioner noted that her proposed endeavor holds national importance because her services will improve economic stability, reduce debt and bankruptcy, prevent financial scams, encourage entrepreneurial growth, and enhance retirement planning.

In denying the petition, the Director concluded that though the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate the Petitioner's endeavor has a potential for national implications within a particular field. The Director noted that the Petitioner did

not provide corroborating evidence to support her claim that her proposed business activities will provide substantial economic and social benefits to the United States or that the impact of her proposed endeavor would extend beyond the company's prospective clients.

On appeal, the Petitioner claims that the record establishes the national importance of her proposed endeavor to create a financial app for self-education because the proposed services have implications within the financial industry and will significantly impact the well-being of people living in economically distressed areas. She also asserts that she is "poised to contribute to both the financial services industry and the STEM (science, technology, engineering, and math) field" and provides articles discussing the importance of promoting participation by women and girls in STEM and financial services careers.

Upon review, the record supports the Director's determination that the submitted documentation does not establish, by a preponderance of the evidence, that the Petitioner 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 specific endeavor that the foreign national proposes to undertake." *See id.* Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted articles and reports addressing the importance of financial services and its impact on the U.S. economy and provided recommendation letters and documents relating to her education, professional experience, and accomplishments. However, as noted by the Director, 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 articles, reports, and letters 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.* Although the Petitioner discusses the value and importance of providing financial services and facilitating better financial management, *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 proposed operations would provide substantial economic benefits to Florida, the 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. For example, the Petitioner's business plan projects that her company will have four full-time employees in the first year of operation and 211 employees after ten years of operation. However, the record does not contain sufficient details and supporting evidence to demonstrate how her company will reach the stated economic impact objectives, including in economically distressed areas; what funds have been committed to pay for potential workers and business expenses; and overall, how her proposed endeavor will substantially impact job creation and economic growth in the region or nation.

While the business plan forecasts total operating expenses to reach over $83,000 in the first year and $38 million in the tenth year of operation, the record does not demonstrate sufficient funds invested in the company. The business plan indicates that the "primary source of investment for this project is a combination of the founder's own financial commitment, strategic collaboration with venture companies, and the invaluable support of business angels." However, the record lacks documentation regarding investment funds. We also note the record contains six letters from individuals indicating interest in working with the Petitioner in the future. However, the letters do not reflect contractual work or investment commitments with the Petitioner's company. Therefore, the Petitioner has not demonstrated that her 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.