U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32372615

Date: JUL. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a personal financial advisor 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 she is an advanced degree professional or eligible for a waiver of the job offer requirement 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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;
- 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 found that the Petitioner did not qualify as a member of the professions holding an advanced degree. Specifically, the Director determined that while the Petitioner has a foreign equivalent to a U.S. bachelor's degree, she did not establish that she has five years of progressive experience in the specialty. The Petitioner does not challenge this finding on appeal.[2] The Director also determined that the Petitioner did not establish that she met any of the three prongs of the *Dhanasar* analytical framework. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner stated in her petition that she will "[a]dvise clients on financial plans using knowledge of tax and investment strategies, securities, insurance, pension plans, and real estate. Duties include assessing clients' assets, liabilities, cash flow, [and] insurance." She stated in her initial cover letter that she "will assist companies and entrepreneurs by evaluating their current financial standing, forecasting and planning, identifying their target markets and resolving complex issues in their risk planning." She stated in her business plan that her company, [redacted] will provide "Financial Advising With Real Estate Specialization Consulting Services and Property Management Services planned to be headquartered in Florida with two business units in Florida and Georgia."

In addition to the business plan, the record includes, but is not limited to, articles and industry reports about financial advisors and the role of immigrants as entrepreneurs, and information from O*NET OnLine and the U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics related to personal financial advisors. Lastly, the record includes letters of recommendation, education records, potential client communication, company records, employer letters, a resume, an advisory evaluation letter, and immigration records.

[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).

[2] We will not address whether we agree with this finding as the determination that the proposed endeavor lacks national importance is dispositive of the appeal. *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).

The Director determined that the Petitioner established that the proposed endeavor has substantial merit, but she did not establish that it has national importance. The Director described the proposed endeavor and projected employee and revenue figures from the business plan. The Director noted the lack of sufficient detail underlying the projections and the company's impact on the field of finance or the U.S. economy commensurate with national importance. The Director determined that while the business plan mentions she will establish her company in a HUBZone, she did not provide evidence that her company would open locations in one or more economically depressed areas. Next, the Director mentioned there was no evidence, at the time the petition was filed, of the company being formed, the Petitioner owning it, and of communication with potential clients. The Director discussed the advisory evaluation letter and found it to be of little probative value due to not addressing the details of the proposed endeavor and why it has national importance. The Director noted that while the industry articles and reports showed the importance of financial advisors, the relevant issue is whether the proposed endeavor itself has national importance.

Finally, the Director stated the Petitioner did not provide sufficient evidence of the proposed endeavor's potential prospective impact, including broader implications, or national or global implications within the field; significant potential to employ U.S. workers; substantial economic effects, particularly in an economically depressed field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, the Director concluded that the Petitioner did not establish the proposed endeavor has national importance.

On appeal, the Petitioner argues that the Director erroneously imposed a stricter standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not specifically identify statements in the Director's decision applying a higher standard of proof or imposing novel substantive and evidentiary requirements beyond those set forth in 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. While the Petitioner's statements reflect her intention to provide financial advisory services to her company's future clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its clientele to impact her field, the financial advising industry, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner asserts that the Director did not give due regard to her business plan, resume, evidence of her work in the field, letters of recommendation, and industry reports and articles. The Petitioner's business plan includes industry and market analyses, information about the company and its services,

financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that her company will employ 7 employees in year one, 8 in year two, 14 in year three, 16 in year four, and 24 in year five, but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while her business plan offers revenue projections of $325,000 in year one, $425,000 in year two, $700,000 in year three, $750,000 in year four, and $1,125,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The Petitioner mentions that she has developed theoretical experience through her bachelor's and master's degrees from Brazil, she has 29 years of experience in the finance industry, and she is a member of the Regional Board of Business Administration of Minas Gerais and the National Association of Women Sales Professionals. The Petitioner references several business-related positions she has held. The record includes multiple letters of support discussing her work experience, as well as her education records. The Petitioner's skills, knowledge, and prior work in her field, however, 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 first prong of the *Dhanasar* framework, however, focuses on the proposed endeavor and not on the Petitioner's education and prior work in the field. The national importance of the Petitioner's proposed endeavor stands separate and apart from her education, skills, and job experience.[3]

Additionally, the Petitioner refers to previously submitted evidence, which includes articles and industry reports about financial advisors and the role of immigrants as entrepreneurs, and information from O*NET OnLine and the U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics, as evidence of the importance of financial advisors in every type of business. She asserts that the articles demonstrate the national importance of the proposed endeavor due to its economic implications. However, the issue here is not the national importance of the field, industry, or profession in which the individual will work; rather we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner has not established that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not demonstrated that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida, Georgia, or the United States. While the Petitioner claims that her company has growth potential, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her endeavor stands to generate jobs for U.S. workers, she has not offered sufficient evidence that her endeavor offers Florida, Georgia, or the United States a substantial economic benefit through employment levels or business activity.

The Petitioner has not provided evidence demonstrating that her proposed financial advisory business would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to

[3] *See Dhanasar* at 890.

substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of her proposed endeavor stands to offer broader implications in her field or to generate substantial positive economic effects in the region where her company will operate or in other parts of the United States.

The Petitioner has not established that she meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, she has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *See Bagamasbad*, 429 U.S. at 25; *see also L-A-C-*, 26 I&N Dec. at 526 n.7.

ORDER: The appeal is dismissed.