U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31852644

Date: JUL. 31, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a contingency insurance underwriter and actuary, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 had established her eligibility for a waiver of the job offer requirement. 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

- 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.

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 second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Petitioner is an entrepreneur with a background in insurance underwriting, with a subspecialty in contingency insurance. She is also a certified actuary. She intends to open a contingency insurance and underwriting firm, where she will offer personalized insurance solutions to customers. She intends to primarily target the sports, leisure, and entertainment industry, while also working with insurers to increase their contingency capacities.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that the national importance of the endeavor had not been demonstrated under prong one, that the Petitioner was not well positioned to carry out the

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Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

endeavor under prong two, or that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We find that the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that Her Endeavor Has National Importance

On appeal, the Petitioner argues that the Director's decision on the *Dhanasar* factors did not "go beyond repetition of vague and boilerplate language.". She notes that this language was originally present in the Director's request for evidence (RFE) and undercuts the quality of the decision in this case. She contends that the Director impermissibly included a requirement that the proposed endeavor be national in scope, and thereby inserted requirements not found in the *Dhanasar* framework.[2] The Petitioner further argues that the director included language in the final decision that the Petitioner had written in her RFE response; by including this language, the Director was conceding the correctness of these arguments. However, she contends that the Director did not apply these statements in reaching the final decision. She also takes issue with the Director's review of the record evidence, asserting that the Director ignored evidence in reaching the decision, most notably her decades of professional experience. Finally, the Petitioner argues that the Director included *ultra vires* requirements more stringent than those found in *Dhanasar*.

The Director found the Petitioner qualified for EB-2 classification as an advanced degree professional and this determination is supported by the record. The Director was also correct in concluding that the requirements for prong one of *Dhanasar* had not been met. However, to ensure clarity, we are withdrawing the Director's analysis on prong one of the national interest waiver analysis.[3] We agree with the Petitioner that the Director's decision contains language and conclusions that could be viewed as not comporting with the *Dhanasar* framework. We also agree that the Director's decision did not fully address the evidence provided with the petition and in response to the RFE. After our de novo review of the record, we conclude that the Petitioner has not established that her endeavor has national importance as required by the first prong of the *Dhanasar* framework.

In support of the endeavor's national importance, the Petitioner has submitted evidence including, but not limited to: a business plan and affidavit detailing her intention to open and operate a contingency insurance and underwriting business; letters of support professional peers, business associates, and clients; documents reflecting her past employment and income; diplomas and certificates; an expert opinion discussing her qualifications and eligibility for a national interest waiver; and articles providing context and background on actuarial services, the contingency insurance market, the entertainment insurance industry, and small businesses in the United States.

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[2] The Petitioner notes that this language was present in *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998). This decision was vacated and replaced by the *Dhanasar* decision.

[3] While the Director's decision did quote language and arguments made in the Petitioner's RFE response, we disagree with the Petitioner's conclusion that the Director was necessarily conceding the correctness of those arguments. Rather, the Director appears to have been including this language to describe the evidence submitted. Regardless of the Director's ultimate intentions, we have independently reviewed all evidence in reaching our decision, including the contents of the RFE response.

The Petitioner asserts that she is an expert in a highly specialized field within the insurance industry, that she has finely honed experience providing contingency insurance with underwriting capabilities, and that she complements this work with advanced actuarial abilities. She contends that this field is "underdeveloped in the United States" and that she will expand and improve the functioning of this subspecialty. She contends that the insurance and financial sectors are crucial parts of the economy, and she will contribute to overall economic growth by participating in these industries. Her submissions also include information that the microinsurance industry, which serves to protect the "health and livelihoods of underserved low-income populations in emerging and developing countries" does not have sufficient access to actuarial services. She indicates that this shortage is also seen in rural areas even in more developed insurance environments. She further stresses that her area of work has been the subject of national initiatives by various nonprofit and profession actuarial organizations, and she also cites to recent legislation that impacts the field.

The Petitioner cites to industry reports to support her contention that the contingency insurance market is underdeveloped. In particular, she argues that the entertainment industry currently has only 107 insurers. Stephen Hoops, *U.S. Industry Spotlight Report, Entertainment Insurance*, IBISWorld, December 2020. However, the Petitioner has not established by a preponderance of the evidence that her company's addition to this market would create a potential prospective impact on the field as contemplated by *Dhanasar*. In *Dhanasar*, we noted that "an 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." *Dhanasar*, 26 I&N Dec. at 889.

Although the Petitioner stresses that the U.S. contingency insurance market is underdeveloped compared to the London hub, she has not clearly indicated how the addition of her company would cause the type of advancement in this field that was contemplated by *Dhanasar*. The reports we have been provided do indicate that there are 107 "businesses" in the entertainment insurance field, but the report also reflects that the market earned billions in profits in 2020. From the addition of one company, even one headed by a capable and experienced executive, we cannot determine that the impacts would meet the *Dhanasar* standard. In addition, the information provided indicates that the types of insurance services the Petitioner intends to offer, including contingency insurance for cancellation, non-appearance, prize awards, and other areas, are currently offered in the United States. We are unable to clearly determine what by what metrics this area of insurance is "underdeveloped," how the Petitioner would impact or develop the market beyond continuing her activities as a contingency insurer and underwriter, or what innovations she would develop. We acknowledge her breadth of experience and the high esteem she is held in by her peers; however, these factors tend to support her positioning to carry out the endeavor; they do not, themselves, establish that her proposed endeavor rises to the level of national importance.

We are also unable to conclude that the proposed endeavor would have "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area." The Petitioner has put forth a proposal showing that she personally, as well as her clients, would see economic benefits from her activity. She has not put forth evidence showing that her expected payroll taxes or the jobs she will create should be considered substantial. In addition,

she has not claimed that the area where she will run the business, [redacted] Beach, is economically depressed or that she would otherwise impact an economically depressed area.[4]

We also acknowledge the supporting evidence indicating that underwriting services are unavailable to microinsurance enterprises. However, these sources indicate that this gap is present either in underdeveloped markets or in rural areas. A review of the Petitioner's business plan and personal statements does not reflect an intent to focus her efforts in such markets or in rural areas of the U.S. Her business plan instead demonstrates an intent to focus on the entertainment and leisure industries; impacts on the microinsurance market that may exist therefore do not appear to be encapsulated within her proposed endeavor.

Because the documentation in the record does not establish the national importance of the proposed endeavor, as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory 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 alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because she has not met the first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] The Petitioner has provided additional evidence on appeal for the finances of her UK-based contingency insurance operation. She indicates that her business was opened in the UK only due to the denial of this petition, and that the earnings would otherwise have come to the U.S. economy. She claims that she has "written a 20 million USD income" in the first year and that the U.S. has therefore missed the opportunity to receive millions in taxes. While the Petitioner has provided financial statements and an employment contract, the referenced documents do not clearly indicate that the UK government received millions in tax revenues from her work. As we have not been provided details of the contracts underlying any earnings, we are also not able to conclude that the proceeds are clearly attributable to the type of work contemplated by her proposed endeavor. In any event, we must evaluate the Petitioner's eligibility for the requested benefit at the time of filing the petition; the proffered evidence regards actions taken after the petition was filed.