U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32373212

Date: JUL. 31, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 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 qualifies as a member of the professions holding an advanced degree. The remaining issue 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 of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance. The Director stated in the request for evidence (RFE) that the Petitioner's proposed endeavor has substantial merit.[2] 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 initially stated that she intends to "contribute to the development and sustainability of the small business sector in cities with low economic development. I will carry out this project through digital media, private consultations and training." She also stated she would "educate the entrepreneur financially and accountingly [sic] so that he can develop his maximum potential, feel empowered, confident, and secure when making decisions for his business. Orient him along the line to diversify his investment or expand it once he feels ready to start it." In response to the RFE, the Petitioner stated her proposed endeavor "is to contribute to the development and sustainability of the small business sector, especially in cities with low economic development, in line with national objectives that encourage the growth of small and medium-sized businesses (SMEs) and promote the importance for entrepreneurs of financial and accounting education. I will continue to contribute to the field of financing and accounting by leveraging my extensive experience in managing cash flows, budgeting, tax projects, and financial accounting consulting to provide consultancies that will be carried out through digital media, training programs, and technical consultations. My work in furtherance of my proposed endeavor will also be disseminated throughout the field through participation in conferences and peer-reviewed publications."

The record includes, but is not limited to, statements from the Petitioner, articles and industry reports about small businesses and financial advisors, letters of interest from potential clients, letters of recommendation, education records, certificates, a resume, employer letters, and immigration records.

The Director listed the proposed endeavor and evidence submitted by the Petitioner. The Director mentioned that none of the articles and industry reports discuss the Petitioner, the proposed endeavor,

[2] The Director also found, in the denial decision, that the Petitioner is well positioned to advance the proposed endeavor. We will not address whether the Petitioner has established whether the proposed endeavor has substantial merit or whether she is well positioned to advance the proposed endeavor 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).

or how the proposed endeavor many have national or global implications within a particular field. The Director stated that the recommendation letters did not support the Petitioner's national importance claim, rather they focused on the contributions she made to her employers. The Director mentioned that the Petititioner did not establish how one consultant would produce benefits rising to the level of national importance, trigger substantial positive economic impacts, or have significant potential to create jobs. The Director noted the Petitioner's reference to her background and qualifications and stated that these are related to the second prong of the *Dhanasar* analytical framework. Finally, the Director stated that the Petitioner did not provide sufficient evidence of the prospective 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 is of national importance.

On appeal, the Petitioner asserts that her statements and supporting documentation established her proposed endeavor has national importance, the Director failed to consider all the evidence related to national importance, and the Director committed an abuse of discretion in denying her case. The Petitioner states that it is not required for her proposed endeavor to have national or global implications, rather that is just one example of a proposed endeavor having national importance. Additionally, the Petitioner states that it is not necessary to meet each of the evidentiary examples of national importance, such as the potential to employ U.S. workers. Next, the Petitioner asserts that the Director imposed novel criteria in emphasizing that the proposed endeavor be national in scope instead of having national importance, and in finding she did not establish the proposed endeavor would have a broader impact in the field outside of her business.

The record reflects that the Director reviewed the Petitioner's proposed endeavor and the supporting evidence, submitted initially and in response to the RFE, in correctly determining that the proposed endeavor does not have national importance. The Director did not state that the Petitioner is required to submit every type of specific evidence that the proposed endeavor has national importance, such as evidence of national or global implications and the potential to employ U.S. workers. Rather, the Director listed the types of evidence that may be submitted to establish that the proposed endeavor has national importance, and correctly found that the evidence submitted by the Petitioner did not establish this. The Director did not impose novel criteria in making the determination that her proposed endeavor does not have national importance. The Director referenced the relevant language from *Dhanasar* and listed the types of evidence that could establish national importance.[3]

The proposed endeavor claimed by the Petitioner involves helping grow small businesses, especially in cities with low economic development, and she previously asserted that bolstering the small business sector aligns with the national priority and the Biden-Harris Administration goals of fostering economic growth, job creation, and supporting entrepreneurs. She previously stated the U.S. economic system cannot run without small businesses due the number of businesses, their contribution to the gross domestic

[3] The Petitioner claims the Director's comments about the letters of recommendation for her were misplaced, as they relate to the second prong of the *Dhanasar* analytical framework. We agree with her claim. The Petitioner did not previously assert that the letters of recommendation were evidence that her proposed endeavor has national importance.

product, their large number of employees, and their tax contributions. She initially submitted articles on how small businesses run the U.S. economy and the percentage of small businesses that fail, and information from the U.S. Small Business Administration website to support her national importance claim. In response to the RFE, she submitted government reports and articles about small businesses driving job growth, minorities having trouble obtaining loans, and the Biden-Harris Administration support for small businesses. 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 consulting services to her 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 business and its clientele to impact her field, the consulting industry, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner asserts that the articles and information referred to above demonstrate the national importance of the proposed endeavor. 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 claims that the evidence corroborates the substantial positive economic impact of the proposed endeavor. The Petitioner, however, has not provided sufficient evidence demonstrating that her consulting business would operate on such a scale as to rise to a level of national importance. The record does not include any financial or employee projections for her business, along with a basis for such projections. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to 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 business will operate or in other parts of the United States. We note that while the Petitioner mentions that ventures focused on one geographic area may be considered to have national importance, the record does not establish where her business would be located. 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. Furthermore, the Petitioner has not shown 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.

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 third prong 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.