U.S. Citizenship and Immigration Services

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

In Re: 31125010

Date: JUN. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal 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 the Petitioner had not established 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. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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. [2]

## II. ANALYSIS

### A. EB-2 Immigrant Classification

As stated above, a petitioner must establish eligibility for the EB-2 classification in order to be eligible for a national interest waiver. At initial filing and in response to the Director's request for evidence (RFE), the Petitioner claimed she qualifies for EB-2 classification as an advanced degree professional. Here, the Director's decision does not include a determination regarding the Petitioner's eligibility as an advanced degree professional. Because we agree with the Director's conclusion regarding the Petitioner's eligibility for a national interest waiver, as will be explained below, we reserve the issue of her eligibility for the underlying EB-2 immigrant classification.[3]

### B. National Interest Waiver

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

> My professional activity as a Legal consultant has substantial merit and national importance. Due to my unique background, I possess in-depth knowledge and experience in a broad range of legal areas and international logistics, as well as solid hands-on experience of working successfully on very complex legal cases and logistical frameworks and scenarios.
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> . . . .
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> I am experienced as a Legal consultant which makes me highly competitive in my field and I have been able to attain a job offer as an Immigration paralegal from [current counsel]. This company is engaged in immigration cases.
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> . . . .
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> As a Legal Consultant with a very broad range of skills, certifications, and experience pertinent to my area, I plan to work as an independent contractor in the United States. . . . I already have interest from a number of U.S. companies who want to contract me as a consultant.

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[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

. . . .

> My unique experience in international logistics would be invaluable to any company or organization working on solutions to the challenges pertinent to supply chains and transportation.

Within the Petitioner's response to the Director's RFE, the Petitioner claimed:

> [The Petitioner's] proposed endeavor is a business called [redacted] will be a registered and licensed visa and immigration consulting firm that will be based in [redacted] Texas. [redacted] will be managed by [the Petitioner] and her sister and partner []. The firm will handle all aspects of immigration-related services; services such as assisting individuals and obtaining different types of visas (non-immigration as well as immigration) and gaining U.S. citizenship . . . and assisting businesses in understanding immigration issues in a global marketplace.
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> . . . .
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> The benefits of [the Petitioner's] proposed endeavor include tax revenue, job creation, income for U.S. businesses from tourists, and income for universities and colleges from international students, as well as having the legal system enhanced by a legal consultant with international experience. . . .
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> . . . .
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> As a person with fifteen years of legal experience in a variety of fields, [the Petitioner] is ideally suited to be part of the vanguard of women who lead their own firms. . . . The lack of diversity in the legal profession is a matter of national importance.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. In addition, the Director reserved an opinion regarding the second and third prongs of the *Dhanasar* analytical framework. *See Dhanasar*, 26 I&N Dec. at 888-91. On appeal, the Petitioner states that her "proposed endeavor is to run a legal services organization in the United States called [redacted] which will focus on assisting immigrants with the paperwork necessary to obtain visas and will also help facilitate both American businesses seeking to enter foreign markets."

As indicated, the Petitioner initially claimed she intended to work as an immigration paralegal or an "independent contractor" providing services as a "Legal Consultant" for businesses "working on solutions to the challenges pertinent to supply chains and transportation." However, in response to the Director's RFE, the petitioner asserted for the first time that she intended to open and operate her own immigration consulting firm. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988).

That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening and operating her own business.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially discussed the importance of the legal consulting services sector, referenced recommendation letters from colleagues, and provided copies of articles from business, industry, and government publications on the topics of the legal profession, the legal services market and industry in the United States, and the demand for skilled professionals in this field. The Petitioner, however, must demonstrate the national importance of her specific, proposed endeavor of providing her particular paralegal and legal consulting services rather than the importance of the occupation or the industry or field.

In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance, for example, because it has national or even global implications within a particular field." *Id.* We also stated 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. We also note that the Petitioner underscores the need for paralegal and legal assistant positions in the United States. However, the alleged shortage of an occupation does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner emphasizes her "unique background," including "fifteen years of legal experience in a variety of fields." The Petitioner's experience, skills, and abilities in her field 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.

Moreover, 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. The Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of working as a paralegal for current counsel or as a legal consultant for an unidentified employer 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, the record does not show, through supporting documentation, how her specific employment services stand to sufficiently extend beyond her prospective employer(s), to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show that her initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show any benefits to the U.S. regional or national economy resulting from her

paralegal or legal consultant position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4]

## III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for, or otherwise merits, a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

[4] *See Bagamasbad*, 429 U.S. at 25-26; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.