U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31109002

Date: JUN. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 the Petitioner's eligibility for the requested national interest waiver. 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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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).

Once 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:

- 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.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue on appeal is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The Petitioner planned to operate her own human resources (HR) consultancy firm in the [redacted] Florida area to "provide specialized advisory and consulting services to small and medium sized companies," with a "focus on optimizing the systems of recruitment, selection, induction, hiring, training, welfare, development plans, job security, disciplinary processes, compensation career plans, and retirement." To do so, she intended to utilize her "extensive experience, skills, and knowledge in the design, creation, development, implementation, and monitoring of human resources area and its sub-processes." According to a provided business plan, the Petitioner's consultancy would focus on multiple major HR functions for her clients, including organizational structure design; human resources performance evaluation; analysis and job descriptions; design of profiles of positions by competencies; variable and flexible remuneration systems; organizational climate management; occupational and psychosocial risk management; knowledge management and specialized concepts; and career and retirement plans. By assisting with the development and improvement of these systems, the Petitioner asserted she would add "value to small and medium-sized companies in the United States[] in order to serve, help, and support their management, generating greater profitability, sustainability over time, and competitiveness with highly competent and happy personnel, [which in turn] would have a positive impact on the economy and competitiveness of the [United States]."

In support of this endeavor the Petitioner submitted four personal statements detailing her extensive experience managing and customizing human resources and organizational management functions for prior employers as well as her plans for the development of her company in the United States. In addition, the record contains multiple articles and industry reports discussing various topics relating to recruitment and retention of employees, including the impact of workplace environmental factors to employees, employee mental health, and federal initiatives aimed at promoting and developing

[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 to be discretionary in nature).

small and medium-sized businesses, as well as the impact of these businesses to regional and national economies. The record also contains a business plan providing a detailed description of the company's offerings and plans for its development, and recommendation letters from past employers detailing the Petitioner's impact on their respective operations.

The Director concluded that, while the Petitioner established the substantial merit of her endeavor, she did not establish its national importance, concluding the endeavor would not result in broader implications to the field, beyond the direct impact to her potential clients. The Director further determined that the record did not establish that her endeavor would result in "substantial economic effects," as contemplated in *Dhanasar*. *See Dhanasar* at 890. Upon de novo review, we agree with the Director's conclusion that the proposed endeavor intended to provide specialized HR consulting services to small and medium-sized businesses has substantial merit. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not show it has national importance.

On appeal, the Petitioner asserts that the Director did not properly consider the evidence on record, imposed novel requirements, and showed a "misunderstanding and misapplication of [the] law that [went] beyond harmless error and reach[ed] the levels of abuse of discretion." As an example of this, the Petitioner relies on the Director's conclusion that the business plan did not establish the endeavor would have substantial positive economic effects because "it [did] not indicate how many full-time employees she intend[ed] to hire." The Petitioner contends that this imposed novel requirements as the Director did not consider the *prospective* impact of the endeavor and mandated a "baseline" number of employees to be hired, which is not specifically required under the *Dhanasar* framework.

Upon de novo review, we disagree with the Petitioner's assertion that the Director misapplied the law or otherwise abused their discretion. The Director did not require the Petitioner to establish that her endeavor would employ a "baseline" number of employees. Rather, when evaluating whether the economic impact of her endeavor would be "significant," the Director noted that this missing information relating to the prospective employment of individuals in the community was probative in establishing whether the endeavor would result in "substantial positive effects [to] the community." *See Dhanasar* at 889. Likewise, the Petitioner asserts that the director misapplied the *Dhanasar* framework in concluding that the endeavor would not benefit the "U.S. regional or national economy," because *Dhanasar* avoids an overemphasis on the geographical breadth of an endeavor. While it is true that *Dhanasar*'s analytical framework avoids "overemphasis on the geographic breadth of an endeavor," the Director's decision considered both regional *and* national economic benefits, without mandating that the economic benefits rise to the national level, which is consistent with *Dhanasar*'s analysis. *Dhanasar* at 890. And the Director did not focus exclusively on the claimed economic benefits of the Petitioner's endeavor when evaluating its national importance, they also considered the prospective impact of her endeavor to the industry. Moreover, as discussed herein, we agree the record does not establish that the economic benefits of the Petitioner's endeavor would be "significant" as contemplated in *Dhanasar*, and therefore any alleged error in the Director's evaluation of the business plan is, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. at, 350 n.5 (citing *Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) (stating that error is harmless where there is no "reason to believe that . . . remand might lead to a different result" (citation omitted))).

The Petitioner also relies on *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) to support her assertion that the Director erred in failing to consider all the evidence in its totality. But the court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides reasoned consideration of the petition, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *See, e.g., Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention").

In her appellate brief, the Petitioner repeatedly states that the record contains "ample evidence" establishing the national importance of her proposed endeavor. However rather than address the Director's conclusion regarding the broader implications of her specific endeavor, she primarily relies on articles and reports discussing governmental interest in the success of small and medium-sized businesses. For example, the Petitioner points to the 2021 Small Business Profile report from the U.S. Small Business Administration discussing the market share of small businesses in the United States, and the importance of small business growth in ensuring a healthy U.S. economy, as well as the Biden administration's designation of National Small Business Week and other various government initiatives aimed at helping small businesses. Yet, these articles and fact sheets are relevant to the substantial merit of her endeavor, not its national importance. The articles do not discuss the Petitioner's work or her proposed endeavor, nor do they establish the Director erred in concluding that the broader implications of her endeavor would not extend beyond her immediate clients to otherwise impact the field. When considering the national importance of a proposed endeavor, the customer base or industry the endeavor will serve, alone, is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not shown the broader implications of her proposed endeavor, however admirable, rise to the level of national importance. In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's clients, like the offerings outlined in her personal statements and business plan, would not have broader implications in the field. *Id.* at 893.

Likewise, we acknowledge the Petitioner's assertion that her endeavor is aligned with the Department of Commerce and the Department of Labor's goals and recommendations for employers regarding employee recruitment, retention, and development, but we do not agree that this establishes the national importance of her endeavor. The stated alignment with federal initiatives may speak to the substantial merit of the endeavor, but the Petitioner has not shown how the services she would provide to her potential clients would lead to broader implications commensurate with national importance, or otherwise meaningfully further these government initiatives. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

On appeal, the Petitioner also asserts the Director erroneously ignored her personal statement discussing her expertise in "fostering a positive work environment, optimizing resources, and contributing to economic growth, all while addressing critical human resource needs in various sectors." Yet, the Petitioner does not elaborate on how her statement establishes that the benefits she intends to provide to her clients would result in broader impact to the field or economy. Likewise, while the personal statements and recommendation letters detail her expertise in the field and her ability to assist her customers through her consultancy, the evidence does not establish broader implications from her work. While we recognize that the Petitioner had a successful career advising numerous companies in differing industry on HR matters and implementing organizational changes for her employers, the record does not establish her impact to the field beyond her immediate employers. Moreover, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 890. The issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor.

We also agree with the Director's conclusion that the Petitioner did not establish that her endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id*. While the Petitioner again asserts that the record contains "ample documentation" establishing the economic benefits of her endeavor, we disagree. The Petitioner states that her consultancy "will have a positive impact on the generation of employment and the competitiveness of the economic sectors," add value to her customers businesses, and lead to increased employment across the economy, but while any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her proposed endeavor would rise to the level of national importance. Moreover, given the limited projections included in the Petitioner's business plan, we are unable to ascertain whether her company's operations will operate on such a level to result in the significant economic benefits contemplated in *Dhanasar*. Further, it appears that the Petitioner is unable to concretely project her company's prospective employment, stating only that "the personnel to be hired would be subject to each project. . . as I develop the activity, I will determine what personnel I will require." Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to her endeavor, the record does not show that benefits resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

Finally, the Petitioner asserts that "it is not inherently necessary to meet each of the possible evidentiary examples provided in the precedent decision," yet the Petitioner has not established the national importance of her endeavor under any of the considerations discussed in *Dhanasar*. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under

Dhanasar's second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.