U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31124997

Date: JUNE 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established that 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion[1], grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Petitioner seeks to provide professional advice to pharmaceutical and healthcare product companies through an independent consultancy. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. 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.

[1] *See also 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).

The Director concluded that the Petitioner's proposed endeavor has substantial merit. The Director determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, that she is well-positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director's decision contains "instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." The Petitioner contends that the Director overlooked the submitted evidence and omitted discussing documents submitted with the petition and in response to the Director's request for evidence (RFE). The Petitioner further argues that the Director failed to review the totality of the evidence and implement the appropriate standard of review.

As previously noted, the first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The record shows that the Petitioner's proposed endeavor is to create a consulting service company that conducts scientific research on dietary supplements, develops and validates analytical methods to meet Food and Drug Administration standards, and trains professionals to improve and analyze supplements for better health outcomes globally. She states that her work will primarily focus on researching, developing, and manufacturing nutritional and dietary supplements. Additionally, the Petitioner seeks to advise companies and conduct educational activities for students and healthcare professionals.

The Petitioner maintains that her proposed endeavor is of national importance because she aims to enhance the quality and efficacy of U.S. nutrition by identifying crucial process improvements and implementing risk prevention and mitigation plans. The record includes personal statement, recommendation letters, letters expressing interest in working with the Petitioner, as well as industry reports and articles related to the field of dietary supplements. The Petitioner argues that the petition and the response to the RFE contained sufficient evidence to demonstrate her proposed endeavor's national importance.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner claims her proposed endeavor is of national importance, the Petitioner 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, the record does not include adequate corroborating evidence, to show that the Petitioner's specific proposed endeavor offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

The Petitioner argues that her proposed endeavor holds national importance because she aims to improve the health of the U.S. population by researching and enhancing the efficacy of dietary and

nutritional supplements to prevent diseases and diet-related disorders. Though we acknowledge the Petitioner's assertions and the submitted evidence, we conclude that the Petitioner has not shown her proposed endeavor's benefits stand to sufficiently extend beyond her clients and the companies she elects to work with to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that her specific endeavor has national importance under *Dhanasar's* first prong. 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 the United States. Specifically, the Petitioner has not demonstrated that her specific endeavor stands to provide substantial economic benefits in the United States. While the Petitioner claims that her efforts will yield broad and significant economic and educational benefits, the record does not support the Petitioner's general assertions with corroborating evidence demonstrating the plausibility of those assertions. The Petitioner contends that seeking employment as a consultant will further the impact of her proposed endeavor, however the Petitioner has not established her endeavor will have broader implications as contemplated by *Dhanasar*. *Id.* at 890.

Moreover, the Petitioner has not demonstrated that her undertaking has implications beyond the companies and individuals she elects to work with to impact the U.S. economy on a broad scale rising to the level of national importance. Nor has the Petitioner shown that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the country. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not indicate that the benefits to the regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner argues that her proposed endeavor is of national importance because it aligns with government-supported policies and initiatives. She also contends her proposed endeavor is in line with government policies aimed at providing studies and outreach to ensure consumers have the accurate information needed to make informed decisions about their products. As previously mentioned, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not sufficiently explained how she will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance. Without evidence projecting U.S. economic impact or job creation attributable to the Petitioner's proposed endeavor, it is insufficient to assert that the benefits to the U.S. regional or national economy resulting from the proposed endeavor would rise to the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner highlights her education and extensive experience in research, drug formulation, and dietary supplements and explains that she plans to leverage her experience to advance her proposed endeavor. Although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's educational background and professional experience are material to *Dhanasar's* second prong—whether an individual is well positioned to advance a proposed endeavor—but they are immaterial to the first

Dhanasar prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

The Petitioner argues that "it is not inherently necessary to meet each of the possible evidentiary examples provided in *Dhanasar* in order to prove that a proposed endeavor is of national importance." We disagree. The Petitioner must still demonstrate the potential prospective impact of her specific endeavor in that area of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. 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. 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 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).

III. CONCLUSION

As the Petitioner has not met the *Dhanasar* analytical framework's requisite first prong, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.