U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31383630

Date: JUNE 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a sales manager specializing in information technology (IT) and banking, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B)(i), 8 U.S.C. § 1153(b)(1)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and, thus, related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. The Director found the Petitioner eligible for EB-2 classification but concluded that she did not demonstrate the merits of her national interest waiver request. On appeal, the Petitioner claims the Director inadequately reviewed the record. She asserts that her proposed endeavor has "substantial merit" and "national importance" and that a waiver would, overall, benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has established that her proposal has substantial merit. But, because she has not demonstrated the purported national importance of her venture, we will dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as members of the professions holding "advanced degrees" or noncitizens of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this immigrant visa category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be "in the national interest." Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016); *see generally* 6 *USCIS Policy Manual* F.(5)(D)(1), www.uscis.gov/policy-manual.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Russian native and citizen, earned a bachelor of economics degree in her home country. She has about seven years' experience in the banking industry, beginning as a sales representative and eventually becoming a sales manager. She then spent about three years in the IT field, working as an account manager, sales/account manager, and business development manager.

The Petitioner first proposed to work in the United States for an employer, as a freelance consultant, or both in the sales management field, specializing in IT and banking. On appeal, she states only her intent to work as a freelance consultant in the field. A petitioner must demonstrate their eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). We will therefore hold the Petitioner to her initial proposal and consider her endeavor to include employment, freelance consulting, or both in the sales management field. *See Matter of Dhanasar*, 26 I&N Dec. at 891 (stating the petitioner's proposed endeavor as including both research in air and space propulsion systems and teaching university courses).

B. EB-2 Eligibility

The record supports the Director's finding that the Petitioner qualifies for EB-2 classification as an advanced degree professional. She documented her receipt of a foreign degree equating to a U.S. bachelor's degree, followed by at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

C. Substantial Merit

Whether a proposed endeavor "has the potential to create a significant economic impact" or relates to "research, pure science, and the furtherance of human knowledge," it may have substantial merit. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director found that "the [Petitioner's] proposal lacks adequate detail to establish the endeavor." The Director stated that, unlike the petitioner in *Dhanasar*, who proposed continuing his research into the design and development of air and space propulsion systems, the Petitioner did not provide "specific insight" as to what she would do in the United States. *See* 6 *USCIS Policy Manual* F.(5)(D)(1) ("[A] petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation.")

On appeal, the Petitioner contends that the Director's analysis conflicts with the decision's conclusion on *Dhanasar*'s second prong. The Petitioner argues that the Director could not have found her well positioned to advance her proposed endeavor without knowing what that endeavor was. She contends that her "professional plan," which she submitted in response to the Director's request for additional evidence, details her U.S. proposal. She also submitted an expert opinion letter from a U.S. professor of management. The expert letter states that her proposal has the potential to improve sales of U.S. businesses and create jobs.

As the Director found, the Petitioner did not provide many details about her proposed endeavor. But the record shows that, whether an employee or a freelance consultant, she would apply strategic sales approaches in efforts to expand sales bases, recommend prospective business solutions, and transfer knowledge about technologies. Because of her experience in banking and IT, she could particularly benefit companies in the growing financial technology sector. Those details and evidence supporting them demonstrate that her proposal could potentially improve U.S. business sales, thereby creating jobs. She also submitted evidence that her venture could help ease a reported shortage of salespeople in the country.

Thus, a preponderance of the evidence demonstrates that the Petitioner's proposed endeavor has substantial merit. We will therefore withdraw the Director's contrary finding.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "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." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

The Director found insufficient evidence that the Petitioner's specific proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic benefits to our country. The Director likened the Petitioner's proposal to the noncitizen's plan in *Dhanasar* to teach U.S. university students in the science, technology, engineering, and mathematics (STEM) disciplines. *See Matter of Dhanasar*, 26 I&N Dec. at 893. The Director stated:

> In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, USCIS finds

> that the petitioner has not shown [that the benefits of] the proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients or the individuals the petitioner would serve to impact the industry or field more broadly.

The expert opinion letter concludes that the Petitioner's proposed endeavor has national importance. The letter discusses the Petitioner's experience and cites many statistics regarding U.S. sales management and consulting. But the letter does not explain how the Petitioner's specific venture would affect the economy and the sales management field on a national level. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (allowing the immigration service to reject or afford lesser evidentiary weight to expert testimony that conflicts with other information or "is in any way questionable").

On appeal, the Petitioner makes several arguments for the purported national importance of her proposed endeavor, claiming that:

- Her sales management abilities and international connections would provide substantial U.S. economic benefits by increasing business sales and creating jobs;
- She intends to focus on "emerging enterprises" and startup businesses, contributing to the country's position as a global leader in technology and innovation;
- She would conduct workshops and mentorship programs to help train the next generation of sales professionals;
- Her proposal supports various U.S. policies and government initiatives, such as workplace equality for women and assistance to small businesses; and
- Her venture would ease a nationwide shortage of sales managers.

As previously indicated, however, when assessing national importance, we must focus on the particular proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). The Petitioner outlines her proposal's potential benefits by stating that her venture would *contribute* to the national economy and various national goals and initiatives. But she has not demonstrated that her *specific* endeavor, alone, would benefit the economy or her field on a national level. The record, for example, does not indicate how much additional revenue she could help an employer or consulting clients to earn, or how many clients she could provide consulting services to. She has not established the size or scope of her proposed activities. The record therefore does not support the Petitioner's arguments.

The Petitioner also argues that letters from her former employers establish the potential national impact of her proposed endeavor. She states: "These recommendation letters demonstrate [that the Petitioner] can have a wide impact on the banking, fintech [financial technology], and IT fields due to the breadth of her experience."

The letters from the Petitioner's former employers, however, do not focus on her proposed endeavor, but rather on her skills and past achievements. The letters do not discuss the "potential prospective impact" of the Petitioner's U.S. proposal. *See Matter of Dhanasar*, 26 I&N Dec. at 889. The letters therefore do not demonstrate the purported national importance of her venture.

The Petitioner has not established that her proposed endeavor has national importance. We will therefore affirm the petition's denial.

E. Waiver Benefits to the United States

Our conclusion that the Petitioner has not demonstrated the purported national importance of her proposed endeavor resolves this appeal. We therefore decline to reach and hereby reserve her appellate arguments regarding the benefits of a waiver to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for relief from removal).

III. CONCLUSION

The Petitioner has demonstrated that her proposed endeavor has substantial merit. But she has not established the purported national importance of the venture. Thus, under our framework, she does not qualify for a national interest waiver. We will therefore affirm the petition's denial for lack of a job offer and labor certification.

ORDER: The appeal is dismissed.