U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31383785

Date: JUNE 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, the owner of a U.S. management consulting business, 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)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(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.; see also Brasil v. Sec'y, Dep't of Homeland Sec.*, 28 F.4th 1189, 1193 (11th Cir. 2022) (holding that a national interest waiver is a discretionary decision).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner demonstrated neither eligibility for EB-2 classification nor a national interest waiver's merits. On appeal, the Petitioner contends that the Director disregarded and undervalued evidence.

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 affirm the Director's waiver finding, agreeing that the Petitioner has not established her proposed endeavor's purported "national importance." We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must 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 jobs for 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, however, 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, an Azerbaijani native and citizen, earned a bachelor's degree in economics and management in her home country. She worked there as a retail sales specialist and later became a retail operations manager. In 2018, the Petitioner came to the United States and worked for companies here as an operations director. In 2022, she and her spouse established a U.S. management consulting business.

The Petitioner seeks to continue operating her U.S. management consulting firm as its chief executive officer. She states that her limited liability company (LLC) offers consultation and management services to small- and medium-sized enterprises and startups. The company's services include: strategy and operations consulting; project, product, and process management; and business process reengineering aimed at enhancing clients' efficiency and minimizing their administrative expenses.

The LLC's business plan states that, over its first eight operating months in 2022, it generated $227,912 in revenues and more than $126,000 in net income. The plan projects 2025 revenues of more than $1 million and net income of more than $500,000.[1]

B. 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 record supports the Director's finding that the Petitioner's proposed endeavor has substantial merit. Evidence shows that her management consulting firm has the potential to help U.S. businesses

[1] In response to the Director's request for evidence, the Petitioner submitted a "business expansion plan," indicating, in part, her U.S. company's intent to expand its operations to [redacted]. A petitioner, however, must demonstrate their eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). Thus, we will not consider the Petitioner's expanded business plan. *See also Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998) ("[A] petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements.")

increase revenues and create jobs. We therefore agree with the Director that the Petitioner has demonstrated her proposed endeavor's substantial merit.

C. 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 that "the record does not show the prospective impact of the petitioner's specific proposed endeavor . . . beyond her own clients, customers, professional colleagues, students, or employer(s) for which she would provide her services."

We agree that the record contains insufficient evidence of the proposed endeavor's national importance. The Petitioner's U.S. business plan projects that, after the company's fourth operating year in 2025, it would generate more than $1 million in revenues and more than $500,000 in net income. These projections do not indicate that the business would affect the economy at a nationally important level. The Petitioner also has neither claimed nor demonstrated that her business would benefit an economically depressed area. Further, she has not established that her business's services would substantially advance the U.S. management consulting field.

The Petitioner submitted an expert opinion letter from a U.S. professor of professional practice. Finding that the Petitioner's proposed endeavor has national importance, the letter states:

> [The Petitioner]'s expertise in providing tailored consultation services to small- and medium-sized enterprises, as well as startups, can significantly contribute to the growth and sustainability of these entities. This, in turn, can foster economic development at both regional and national levels, ultimately enhancing the competitiveness of the United States in the global business arena.

The expert letter states that the Petitioner's ability to solve complicated business problems would have global influence. The letter states: "[The Petitioner]'s leadership [of her U.S. company] carries substantial merit and national importance due to its potential to drive economic growth, enhance competitiveness and influence consulting practices both nationally and globally."

When combined with other businesses' activities, the Petitioner's consulting services might "contribute" to national economic growth and "enhance" U.S. competitiveness. But the Petitioner has not demonstrated that her specific consulting business would help enough clients increase sales and create enough jobs to exert a national economic impact. She has also not sufficiently explained how her company's services would advance the management consulting field.

On appeal, the Petitioner contends that her proposed endeavor supports various national policies and initiatives, including: gender equity and equality; women's economic empowerment; and support for women small business owners. The Petitioner also states that, by optimizing clients' business processes and enhancing their efficiency, her business would contribute to overall societal welfare, increasing standards of living and customer convenience.

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). Thus, while the Petitioner's management consulting services may "contribute" to economic growth, she has not demonstrated that her *specific* business – alone – would have national implications for the U.S. economy or the management consulting field.

As the Director found, the Petitioner's proposed endeavor resembles one we considered in *Dhanasar*. There, the petitioner proposed teaching U.S. university students in science, technology, engineering, and mathematics (STEM) disciplines. *Matter of Dhanasar*, 26 I&N Dec. at 893. We agreed with the petitioner that STEM education had substantial merit and would support national policies and initiatives. *Id.* But we concluded that the venture lacked national importance because the record did not demonstrate "that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.*

Like the petitioner in *Dhanasar*, the Petitioner's proposed management consulting services has substantial merit and supports national policies and initiatives. But, also like the petitioner in *Dhanasar*, she has not demonstrated that her specific proposed business would affect the national economy or the management consulting field "more broadly." *See Matter of Dhanasar*, 26 I&N Dec. at 893.

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

E. The Remaining Requirements

Our conclusion that the Petitioner has not demonstrated her proposed endeavor's purported national importance resolves this appeal. We therefore decline to reach and hereby reserve her appellate arguments regarding her eligibility for EB-2 classification and a waiver's purported benefits 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 not demonstrated that her proposed endeavor has national importance. 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.