U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31508405

Date: JUN. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a home beauty services business owner, seeks second preference 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 EB-2 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies for underlying EB-2 classification as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner indicated that her proposed endeavor as an entrepreneur involves operating an at home beauty services and products application (app) business, [redacted] in the state of Florida, that will "further employment and contribute to the financial and economic independence of women in the United States." She stated that she will "promote and design unique methodologies for the generation of work in the United States for women, mothers, heads of family and professionals with previous knowledge in the beauty sector." The Petitioner further asserted that she "will carry out her undertaking through the implementation of her already successful app in Colombia which consists of offering home beauty services and beauty products provided by women that are mostly mothers and heads of households." She indicates that her work is "based on a collaborative economy where [her] company will serve as a seamless connection between people looking for beauty services in . . . their home[s] and the skilled staff that can provide such service." The Petitioner went on to state:

> . . . Petitioner's work is nationally important to the U.S. as it will contribute to the inclusion of women, mothers, and heads of family in the economy by providing them with quality job opportunities in the United States, and seeks to reduce gender inequality. By using her extensive experience in marketing, advertising, social media management, customer management, and personnel management as well as her extensive knowledge of the beauty industry, she plans to connect people that are in need of beauty services from the comfort of their home to the skilled workers who can provide that type of service. Her work will without doubt help include working women into the economy and allow them to gain financial independence and contribute to their household income, which indeed helps alleviate poverty and reduce reliance on public assistance programs, contributing to overall national security and global competitiveness.

The Director reviewed the totality of the evidence in the record, including the Petitioner's statements, business plan, company agreement, letters of recommendation, letters of interest for collaboration, and numerous articles and reports on the importance of women's employment and economic empowerment. The Petitioner's business plan specifically indicated that the business "is a beauty at home application that performs services and sells beauty and personal care products" and reiterated its intent to generate work for women in the United States. It indicated that it will connect customers with professional women in the area who will perform beauty or personal care services at the

customers' homes. It then projected that the business will expand to "beauty trucks" servicing different areas of [redacted] Florida in its first year and the opening of its first physical studio in the [redacted] Florida area in its second year. It further stated that the goal is "to have four to five beauty trucks that will be in charge of performing home services and . . . expand [] coverage in different cities in Florida," open a physical location in its second year, and offer an "academy service for beauty events" where interested parties can learn or update their skills in beauty services. With respect to projected revenues, the business plan indicated that the goal is to generate annual revenues in excess of $360,000 between services and products and achieve an income of over $40,000 per year for "American mothers who are heads of households." With respect to staffing, the business plan identified the management structure, including the Chief Executive Officer (CEO), marketing director, advertising agency, graphic designer, digital advertising, application development, financial management, and legal advisors. The business plan did not specifically provide information about the beauty service providers; the Petitioner's statement, however, indicated that the business will initially have "between 12 to 20 people" in different zones within [redacted] Florida and aims to employ 60 by the end of a five-year period. She indicated that once the personnel is hired, the equipment will be delivered for services to be rendered.

The Petitioner provided articles and reports[2] discussing the importance of women's employment and economic empowerment, particularly in the United States, and the growth and development of the beauty industry within the United States. These documents indicate the existence of a gender pay gap in the United States, a lack of "work-family policies" that keep women out of employment, and a lack of opportunities for women in the workplace. The Petitioner also submitted published materials by the White House and other government agencies to show that her proposed endeavor is nationally important because it promotes greater employment opportunities for women and addresses the inequity and gender wage gap within the U.S. workforce, which is closely tied to the U.S. government's interests.

The Director determined that the Petitioner established the proposed endeavor's substantial merit but not its national importance. Regarding substantial merit, the endeavor's merits 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.

On appeal, the Petitioner generally asserts that the Director's decision contains instances of a misunderstanding and misapplication of law, and primarily contends that she previously provided sufficient evidence to show the national importance of her proposed endeavor. The Petitioner contends that the record includes numerous articles and reports to demonstrate the national importance of the proposed endeavor, which were not thoroughly analyzed by the Director. The Petitioner asserts that the Director "underestimates the scope and impact of the Petitioner's proposed endeavor, erroneously limiting it to her organization and its clients, and overlooking most of the articles that showcase its potential to address significant national challenges related to gender inequality and the lack of economic opportunities for women, mothers, and heads of households." In reference to government initiatives, the Petitioner argues that "the provided articles indeed demonstrate an interest from the United States in harnessing the Petitioner's knowledge and expertise. In fact, the Petitioner's proposed

[2] The Petitioner submitted numerous articles and reports in the record. While we may not discuss every document submitted, we have reviewed and considered each one.

endeavor will provide greater employment and economic opportunities for American women, promoting gender equality, economic inclusion, and wage equity, issues that have been the subject of numerous government initiatives." She states that her "endeavor is closely tied to the government's interest."

Upon de novo review, we agree with the Director that the Petitioner's endeavor has substantial merit but does not satisfy the national importance element of *Dhanasar*'s first prong. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs. *See id.* (requiring that petitioners establish all three prongs in order to establish eligibility).

The Petitioner maintains on appeal that her proposed work as an entrepreneur in the beauty services and products industry could benefit the United States as her business "will offer employment and professional development opportunities to women, thereby contributing to narrowing the wage gap and enhancing their participation in the national economy." The Petitioner indicates that her proposed "endeavor will assist American women in addressing [known] challenges[, such as wage inequality, sexual harassment, and the expectation to handle the majority of domestic and family tasks, even while working full-time]. Through her undertaking, the Petitioner will provide employment opportunities that offer flexibility and empowerment, enabling women to reconcile their work and family responsibilities, and thus improve their economic and professional position."

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." *See id.* at 889. Although the Petitioner emphasizes that her endeavor will employ and provide professional development opportunities for women in the United States, the Petitioner must demonstrate the national importance of her specific, proposed endeavor, of her particular services through her business, rather than the importance of any of the topics or the industry or the field. In *Dhanasar*, we further 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.* In this case, we recognize that there is a gender wage gap in the United States, as well as other social issues affecting women in the workplace, as reported in the articles and reports submitted. However, while the government initiatives acknowledge the need to provide greater employment and economic opportunities for women in the United States, they do not indicate that government has an interest in the Petitioner's planned business activities to establish an at home beauty services and products app. The Petitioner has not shown how her proposed endeavor specifically has national implications within her particular field.

The Petitioner has not otherwise provided sufficient evidence documenting the "potential prospective impact" of her work. Although again, the Petitioner's statements reflect her intention to employ and provide professional development opportunities for women within the beauty services industry, ultimately the proposed endeavor involves operating an at home beauty services and products app business, [redacted] and she 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, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her immediate clientele for beauty services and prospective employees as beauty service providers to impact the at home beauty services industry more broadly at a level commensurate with national importance. For instance, the Petitioner contends that her proposed endeavor will impact the economic and social welfare of women in the United States through employment. However, the Petitioner did not establish how her services or business would have a broader impact on women's employment as beauty service providers rather than limited to providing services involving the Petitioner's app or her business or clients in the [redacted] Florida area.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. *See id.* at 889 ("An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, . . . may well be understood to have national importance."). Specifically, she has not shown that her company's future staffing levels, business activity, and associated tax revenue stand to provide substantial economic benefits in Florida or the United States. While the Petitioner's business plan indicates that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her company will hire women to combat wage and opportunity inequalities in the United States, she has not offered sufficient evidence that the area where [redacted] operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Moreover, while the Petitioner contends that her proposed endeavor will improve the economic and social welfare of women in the United States, she has not shown that the prospective impact of the beauty services performed by her company represents a significant share of the beauty services industry. Accordingly, 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 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.

ORDER: The appeal is dismissed.