U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31456554

Date: JUN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal consultant, 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 Petitioner did not establish her eligibility for the EB-2 classification as a member of the professions holding an advanced degree as she claimed. The Director also concluded that the Petitioner did not show that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of establishing her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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 establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

[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 holding that USCIS' decision on a national interest waiver is discretionary in nature).

II. EB-2 CLASSIFICATION – ADVANCED DEGREE

As a preliminary matter, to establish that a petitioner holds a qualifying advanced degree for EB-2 classification purposes, the petition must be accompanied by an official academic record evidencing a U.S. advanced degree or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(3)(i)(A). Advanced degree means a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate; and a U.S. baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). A petitioner thus may alternatively present an official academic record evidencing a U.S. baccalaureate or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing at least five years of progressive post-degree experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B); *see also* 8 C.F.R. § 204.5(k)(2). Evidence of qualifying experience must be in the form of letters from current of former employers and shall include the name, address and title of the writer and a specific description of the duties performed, but if that evidence is unavailable, other documentation will be considered. 8 C.F.R. § 204.5(g)(1).[2]

As the Director concluded in a request for evidence (RFE), the Petitioner has a law degree in Brazil, which she agrees is equivalent to a U.S. bachelor's degree. A copy of her "Bachelor of Laws" diploma, underlying school record, and an academic evaluation the Petitioner submitted, shows that she has a foreign-equivalent bachelor's degree.[3] The Petitioner therefore must establish, as of the date of filing, that she has at least five years of progressive experience in the specialty from the date she obtained her bachelor's degree, January 9, 2015, to demonstrate that she holds an advanced degree for EB-2 classification purposes. 8 C.F.R. § 204.5(k)(3)(i)(B)

Turning to the requisite five years of progressive post-degree experience in the specialty, the Petitioner maintains that reference letters from her former employers and colleagues satisfy the evidentiary requirement as set forth under 8 C.F.R. § 204.5(k)(3)(i)(B). However, these letters mainly describe the Petitioner's credentials and the writers' working relationships with her, including her general tasks, and do not collectively demonstrate the required five years of qualifying experience as she claims. Specifically, the record contains reference letters from four individuals for whom the Petitioner claims she worked as an attorney at various times from 2015 to 2021, while operating her own law practice since 2017. As to relevant professional experience, a letter from S-R-D-J-[4] states that she worked with the Petitioner "in direct partnership . . . from 2018 to 2020, when she provided all intellectual and organizational support in [S-R-D-J-'s] office." Another letter from T-G- generally states that he "hired" the Petitioner "as an outsourced partner to help [T-G-] with some of [his] cases, especially dealing with from January/2017 to June/2018 [sic]" and that the Petitioner was "a fundamental part of the development of some cases." A similar letter from N-B-X-L- indicates that she also "hired" the

[2] Although the Petitioner may seek EB-2 classification as a professional holding an advanced degree and/or an individual of exceptional ability, she sought classification below only as a member of the professions holding an advanced degree, and the Director did not address whether she established EB-2 classification eligibility as an individual of exceptional ability. We therefore do not consider the Petitioner's assertions as to exceptional ability now raised before us for the first time on appeal. *See Matter of J-Y-C-*, 24 I&N Dec. 260, 261 n.1 (BIA 2007) (noting that matters not raised previously are waived on appeal); *see also Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190 (BIA 2018) (same; collecting cases).

[3] The Director's decision on advanced degree indicates that the Petitioner did not establish the requisite educational degree requirement in part because no underlying academic record was submitted. But the record contains such documentation, including her law school transcript and a diploma evaluation. We thus withdraw the Director's findings to the contrary.

[4] We use initials for individuals' privacy.

Petitioner "as an outsourced partner to help [N-B-X-L-] with some of [her] cases, especially dealing with from December/2016 to June/2021 [sic]." These letters lack specific dates of the Petitioner's claimed employment and do not otherwise delineate her professional duties, tasks, and the extent to which she was involved in the claimed projects as a partner or an employee. It is also unclear if she worked for the said individuals on a full-time basis. Further, the record does not contain any independent evidence of the claimed partnerships or employer-employee relationships, such as contracts and payment or other work-related records. Although the Petitioner also submitted a letter stating she worked initially as a trainee and then as a lawyer for K-V-D-S- from March 3, 2014, to August 28, 2015, under her "direct supervision," this letter does not clearly indicate K-V-D-S- was the Petitioner's former employer during this time. The remaining letters are reference or recommendation letters from colleagues (and not from former employers, as required) attesting to their past work experiences with the Petitioner, and as such given limited evidentiary weight.

While we recognize that the Petitioner has been self-employed for most of her career, the letters from the claimed employers lack specific dates and descriptions of the work done by or with her, and the record also lacks supporting evidence of the ongoing nature of her own business during the relevant time period, such as tax, financial and business records.[5] As stated, evidence of qualifying experience must be in the form of letters from current of former employers and shall include, inter alia, a specific description of the duties performed, and where that evidence is unavailable, other documentation will be considered. 8 C.F.R. § 204.5(g)(1). Here, the Petitioner has not met this evidentiary burden to demonstrate she has the required five years of progressive experience in her specialty from the date she obtained her bachelor's degree on January 9, 2015, to the date she filed her petition. Consequently, the Petitioner has not established her eligibility for EB-2 classification as a member of the professions holding an advanced degree.

III. NATIONAL INTEREST WAIVER

Without first establishing her eligibility for EB-2 classification, the Petitioner cannot qualify for a national interest waiver as a matter of discretion. Even if we were to consider the merits of this waiver, we agree with the Director's decision denying the waiver because the record evidence did not satisfy the first prong of *Dhanasar* as it did not show that her proposed endeavor is of national importance.

The Petitioner plans to open a legal consulting firm called [redacted]. She has worked as a lawyer in Brazil after earning a bachelor's law degree in 2015 and has since taken additional law courses. The Petitioner proposes that as the managing partner of her consulting firm, she will advise U.S. companies seeking to enter the Brazilian market on the legal requirements, including labor and other related regulations, as well as on financial planning, and facilitate cross-border business expansion by helping them navigate complicated legal hurdles and ensuring regulatory compliance.

[5] Although the reference letters indicate that the Petitioner worked for or with the claimed employers from 2015 to 2021, we note that she indicated in her petition, which she filed in November 2022, that she only worked full-time for a law firm ("A-D-T") from August 2015 to December 2016 and then a as a full-time solo practitioner from March 2017 to July 2019, without listing any other work experience. Further, she did not submit an employment letter from A-D-T-, and her resume also only lists the same prior work experience, clearly stating that she closed her own practice in 2019 and "did not take on new cases." Her general court docket list from Brazil shows she had only one case in 2015, five in 2016, nine in 2017, 17 in 2018, and nine in 2019. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (stating that where there are inconsistencies, petitioners must resolve the discrepancies with independent, objective evidence pointing to where the truth lies).

Dhanasar's first 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. In assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id*. at 889.

The Director first noted that the Petitioner did not specify her endeavor, which may impede evaluation of the related evidence under *Dhanasar*'s three-prong test. Although the Petitioner's own statement and general description of her proposed duties in her petition are lacking in many ways, considering the overall evidence, including her business plan and two briefs submitted below, we conclude that her proposed endeavor is sufficiently detailed to form a basis for *Dhanasar* evaluation.[6]

Nevertheless, the Director ultimately concluded that under the *Dhanasar* framework, the Petitioner did not establish that her proposed endeavor is of national importance in part because she did not demonstrate that her business would have significant potential to employ U.S. workers, broadly impact the legal consulting field beyond her business, or otherwise have broader economic implications rising to the level of national importance. On appeal, she alleges that the Director applied pre-*Dhanasar* framework and erroneously considered geographical implications and lack of hiring potential as key factors while ignoring other relevant factors. Upon de novo review, we conclude that the record evidence does not demonstrate that the Petitioner's proposed endeavor has national importance.

Under the preponderance of the evidence standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed and weighed the Petitioner's documentation by a preponderance of the evidence to evaluate whether her proposed endeavor is of national importance as contemplated by *Dhanasar*.

In asserting that her proposed endeavor has national importance, the Petitioner refers to her academic credentials and professional experience as well as the same market statistics information included in the industry reports and articles submitted below pertaining to trade between the United States and Brazil. She further reasserts that, given her background, which she claims ideally aligns with the great market potential and needs, her proposed endeavor will help remove barriers to cross-border trade and ultimately have a broader, substantial positive impact resulting from the improved economic conditions and trade relationships between the two countries. But the Petitioner's reliance on her credentials and experience relate to the second prong of the *Dhanasar*, which "shifts the focus from the proposed endeavor to the foreign national." *Id*. at 890. Under *Dhanasar*'*s* first prong, at issue here, we evaluate whether the specific endeavor she proposes to undertake has broader implications, rather than the general descriptions of work of the entire industry in which she proposes to engage based on her background and skills. In doing so, we look to evidence showing the "potential prospective impact" of her proposed endeavor. *Id.* at 889. Here, as a managing consultant of her own firm, the Petitioner proposes to work with individuals and businesses by providing a variety of consulting services. Although we acknowledge that her proposed endeavor could have a positive impact on her business, she has not persuasively explained, and the evidence does not demonstrate,

[6] We do not further address the issue of specificity of the proposed endeavor here as *Dhanasar*'s national importance prong is dispositive of this appeal, as discussed below.

how her proposed work would have the broader implications for the consulting services industry, U.S. economy, and international trade as she claims, beyond her business and potential clientele.

In *Dhanasar*, we sought to avoid overemphasis on the geographic breadth of a proposed endeavor, specifically noting that endeavors with "significant potential to employ U.S. workers" or those having "substantial positive economic effects, particularly in an economically depressed area" *may* have national importance. *Id.* at 890. The Petitioner's business plan includes an organizational chart and a five-year "Personal Plan" listing her as "Managing Partner and Consultant" initially overseeing five employees comprising a junior consultant, a financial advisor, a paralegal, a sales representative, and an administrative assistant; and by year five, two financial advisors, two paralegals, two sales representatives, five junior consultants, and one administrative assistant. While the business plan also includes a "Hiring Plan" chart and general descriptions of the duties of these positions, the record does not include any evidence-based justifications for the staffing projections and need to employ additional employees, and thus does not demonstrate a significant potential to employ workers.

The business plan also includes financial conjectures projecting a "Sales Forecast" ranging from approximately $500,000 in its first year of operation to over $1 million in its fifth year. The plan also projects the firm's initial "Net Worth" of around $40,000 in its first year will increase eightfold by year five, to around $316,000. However, the record lacks corroborating evidence that would objectively substantiate these projections, such as underlying independent basis for the firm's claimed net worth and the source of the claimed sales and revenue. The record also does not contain any evidence as to how the Petitioner's firm will specifically achieve these projections.

While the Petitioner continues to express her desire to contribute to the U.S. economy and international markets, she has not established with specific, probative evidence that her proposed endeavor will have broader implications in her field, have significant potential to employ U.S. workers, or have other substantial positive economic effects. Even assuming the Petitioner's business projections were to materialize, the record lacks evidence that hiring 12 employees and generating taxes of over $126,000 with resulting net profit of $88,875 (after expenses) by the fifth year rises to the level of national importance. In sum, the Petitioner has not provided sufficient probative evidence to demonstrate that her consulting firm's future staffing levels and proposed business activities stand to provide the claimed substantial economic or other nationally important benefits as contemplated by the *Dhanasar* framework. Considering the foregoing, she has not demonstrated that her proposed endeavor as a managing legal consultant within the consulting services field has broader national implications.

Lastly, the Petitioner also asserts that the Director failed to clearly notify her of the alleged evidentiary shortcomings related to the issue of national importance before denying her petition. But the issuance of an RFE is entirely within the Director's discretion. 8 C.F.R. § 103.2(b)(8)(i). Further, the Director in fact issued an RFE specifically seeking competent evidence for the claimed national importance of the Petitioner's proposed endeavor as required by *Dhanasar*. The Petitioner's RFE response, however, did not include any additional evidence related to this issue. She therefore has not demonstrated that she warrants a national interest waiver.

To be eligible for a national interest waiver, *Dhanasar*'s all three prongs must be met. As the identified basis for denial, the Petitioner's inability to meet the first prong, is dispositive of this appeal, we decline to reach the remaining appeal arguments as to the second and third prongs of the framework.

See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision); *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.