U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30338903

Date: Jun. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who "plan[s] to advance the field of international development" in the United States,[1] seeks second preference immigrant classification (EB-2) 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) (2022). 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. Section 203(b)(2)(B)(i) of the Act.

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 did not establish a waiver of the required job offer, and thus the labor certification, would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3 (2022).

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 immigrant 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 (AAO 2016), provides the framework for adjudicating national interest

[1] According to the October 2023 statement from counsel, the Petitioner's petition is "based on her demonstrated leadership and plan to advance the field of international development."

waiver petitions. *Matter of Dhanasar* states that USCIS may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that:

- 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.

Matter of Dhanasar, 26 I&N Dec. at 889-91.

II. ANALYSIS

The Director concluded that the evidence confirms the Petitioner "qualifie[s] as an individual holding an advanced degree." However, the Director determined that she has not established "the proposed endeavor has substantial merit," and has not demonstrated "the national importance of [her] proposed endeavor as required by the first prong of the *Dhanasar* precedent decision."[3] As such, the Director found that the Petitioner has failed to demonstrate that granting a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

Upon de novo review, we agree with the Director's finding, concluding that the Petitioner's proposed endeavor does not satisfy the national importance element under *Matter of Dhanasar*'s first prong. If the Petitioner does not meet the first prong, the record is dispositive in finding that she is ineligible for the national interest waiver, and we need not address other eligibility requirements, including whether the proposed endeavor has substantial merit, or whether the record satisfies the second and third prongs under the *Matter of Dhanasar* framework.

As explained in the Director's decision, the first prong – substantial merit and national importance – focuses on the specific endeavor that the foreign national proposes to undertake in the United States. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. We noted in *Matter of Dhanasar* 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.* We also stated that "[a]n 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.* at 890.

The Petitioner states on appeal that "her proposed endeavor is [to work] as an International Developer Worker," in "the field of international development." Specifically, according to her March 2023 statement, she is the president of a nonprofit organization that she and her spouse had founded in the

[2] *See Poursina v. USCIS*, 936 F. 3d 868, 870-76 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature); *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 is discretionary in nature).

[3] The Director also concluded that the Petitioner "has not established 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." *See Matter of Dhanasar*, 26 I&N Dec. at 889-91.

United States in 2019. The organization is [redacted] and its pilot project is called [redacted] The Petitioner explains on appeal that [redacted] aims to contribute to international development work in Honduras through coffee exportation projects to employ more Hondurans and prevent unlawful migration to the United States." She indicates on appeal that she plans to "replicate the project in other countries that have a high level of unlawful migration to the United States." The evidence in the record, including [redacted] Proposal and the Petitioner's statement, indicates that her proposed endeavor involves helping farmers and other agricultural workers who are located outside of the United States. The [redacted] Proposal lists "Honduran departments of [redacted] as the "project location." The Petitioner believes that assistance given to people and entities overseas will encourage individuals to remain in their home countries, and thus, lower the number of individuals who enter the United States illegally.

As supporting evidence, the Petitioner has presented materials verifying her educational and professional background, including her diplomas, reference letters discussing her competencies and experiences, as well as documents discussing her studies in Honduras, Germany and South Korea, and her work for entities associated with the Honduran government, such as the Consulate of Honduras in [redacted] Texas. These materials confirm that she is an educated individual with experience in the field of international development. These materials relate to the second prong of the *Matter of Dhanasar* framework, which the Director concluded in the decision that the Petitioner has satisfied. *See id.*, 26 I&N Dec. at 890. Specifically, the Director determined that the Petitioner has presented evidence showing that she is "well positioned to work as an International Developer Worker" and is "well positioned to advance [her] proposed endeavor." At issue, however, is whether the Petitioner has met the first prong of the *Matter of Dhanasar* framework.

On appeal, the Petitioner argues that her proposed endeavor has national importance, and as such, she has satisfied the first prong of the *Matter of Dhanasar* framework. *See id.*, 26 I&N Dec. at 889-91. She claims that her proposed endeavor has national and global implications because it "impact[s] . . . U.S. social welfare through addressing the root causes of migration from Honduras." She states that "[b]y working on international development projects to empower Hondurans with economic opportunities to stay within the country rather than migrate to the United States, [her] work will impact both . . . Honduras and . . . the United States." She further states that "[a]s an insider who [had] worked directly with the Honduran government and U.S. immigration agencies, including ICE [Immigration and Customs Enforcement] and OOR [Office of Refugee Resettlement], [she] will transform . . . international development work [i]n Honduras [which] will impact the U.S. immigration system."

The precedent decision *Matter of Dhanasar*, 26 I&N Dec. at 890, instructs that we must consider the Petitioner's proposed endeavor's "potential prospective impact," noting that national importance could be shown with evidence of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Here, the evidence is insufficient to confirm that the Petitioner's proposed endeavor will likely impact the field of international development or that its potential prospective impact has national implications within the field. *See id.*, 26 I&N Dec. at 889. The project proposal discusses the [redacted] aim to assist "medium landowners" to "increas[e] their productivity through better practices and selling their coffee brand abroad," which, the Petitioner claims, will lead to landowners employing more individuals and "dissuad[ing those individuals] from migrating" to the United States.

According to materials that the Petitioner has offered on appeal, the U.S. government and its partners have already been providing the types of assistance and engaging in the types of international development work referenced in the [redacted] Proposal. For example, U.S. Agency for International Development (USAID) documents indicate that the U.S. government and its partners are "providing agricultural support to smallholder farmers [in Honduras] . . . to improve food security"; "training smallholder farmers to implement climate-resilient farming practices . . . to increase crop production and better project against future climate shocks"; and "helping vulnerable households restore livelihoods, increase financial resilience, and mitigate the impact of future shocks." Similarly, documents from the White House state that the Biden-Harris Administration is addressing "the root causes of migration," by "help[ing] people from [Honduras and other countries] find hope at home." These materials explain that the Administration is focusing on "partner[ing] with other governments, international institutions, businesses, foundations, and civil society" to address the root causes of migration. The Petitioner acknowledges on appeal that the "U.S. government dedicates significant resources to addressing the root cause[s] of unlawful migration . . . as a part of its commitment to international development work."

The record indicates that the U.S. government and its partners have been engaging in the same types of international development work that the Petitioner's proposed endeavor seeks to engage in, with the same purposes as those of the Petitioner's proposed endeavor. While the Petitioner has offered documents describing her proposed endeavor, she has not explained how her proposed endeavor will likely improve or advance the field of international development. Without additional evidence, she has not demonstrated that her proposed endeavor has a broad impact in the field, such that its potential impact will likely reach the level of national importance.

Additionally, the evidence in the record does not support a finding that the economic effects of the Petitioner's proposed endeavor will likely have national importance. The precedent decision *Matter of Dhanasar*, 26 I&N Dec. at 890, provides that "[a]n 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." In this case, the Petitioner claims on appeal that her proposed endeavor "has the potential to employ U.S. workers" because the "nonprofit would employ staff in the United States." The [redacted] Proposal indicates that the project plans to hire 16 employees to fill various positions, including positions for a development consultant, an accountant, four agronomists, and a project administrator.[4]

Even if we were to accept that the Petitioner's proposed endeavor will likely have some economic impact, as it is the case with most employment creation, as discussed in the Director's decision, 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 Matter of Dhanasar*, 26 I&N Dec. at 890. In other words, the Petitioner has not shown that the possible creation of 16 positions and any other potential economic effects associated with her proposed endeavor constitute "substantial positive economic effects" discussed in *Matter of Dhanasar*.

[4] Page 18 of the [redacted] Proposal provides that "All USA staff must be willing to temporarily relocate or be able to travel often to the selected location," presumably outside of the United States.

We acknowledge that the Petitioner's proposed endeavor aims to accomplish goals that the U.S. government has set to achieve. Even if we were to conclude that her proposed endeavor has substantial merit, merely working in an important area is insufficient to establish the national importance of her specific proposed endeavor. As discussed, the relevant question is not the importance of the area in which the Petitioner plans to work; rather, we must focus on "the specific endeavor that [she] proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In this case, for the reasons we have discussed, the Petitioner has not demonstrated her proposed endeavor will likely reach the level of national importance.

Accordingly, we find that the Petitioner has not satisfied the first prong of the *Matter of Dhanasar* framework, and she has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Matter of Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 *Matter of Dhanasar* analytical framework, we find 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.