U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31455435

Date: JUNE 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a historian, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. 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. 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 waiver petitions. Dhanasar states USCIS may, as a matter of discretion,[1] 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree.[2] We agree that the record supports that determination.

The issue on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further determined that although the Petitioner established that she is well positioned to advance the proposed endeavor under *Dhanasar's* second prong, she did not establish 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 under *Dhanasar's* third prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[3]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id.

The Petitioner proposes to establish a business in Massachusetts for which she would be its chief executive officer. She indicates that her business would primarily provide expert witness services and country condition reports to non-profit organizations, law firms, and U.S. immigration individual applicants. The expert witness services would focus on safeguarding immigrants and upholding human rights through asylum by assisting low-income, vulnerable individuals who seek immigration benefits in the United States, in particular Brazilian and Latin America victims of domestic violence, human trafficking, and other crimes. By providing reports and opinion letters about the state of human

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[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] To demonstrate she is an advanced degree professional, the Petitioner submitted her diplomas, her academic transcripts, and an academic evaluation. The record demonstrates that she holds the foreign equivalent of a U.S. master's degree in history and the foreign equivalent of a doctor of philosophy in history. See 8 C.F.R. § 204.5(k)(3).

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

rights and other conditions in Brazil, the Petitioner maintains her business will ensure others understand the culture and social conditions of Brazil so that "legal decisions are based on accurate information and that justice is served." She claims that her business would impact immigration and legal assistance on a national scale by broadly enhancing U.S. national welfare, culture, and the economy. We agree with the Director that the Petitioner's proposed endeavor to provide expert witness services has substantial merit.

In addition to the expert witness services for immigrants, her business will "offer advisory services related to market analysis to investors and businesses in both the [United States] and Brazil. The services will be aimed at improving the overall operational and other activities of businesses, which will likely further contribute to the development of the local economy." The business plan explains that "[a]ccording to a number of sources, market research is vital for businesses of all sizes, regardless of the industry they are operating in, and provides real data which can be used to improve and strengthen various parts of the company." The Petitioner included a letter of intent from a financial services company interested in hiring the Petitioner's business to provide financial analysis, investment management, and tax compliance services.

The Director did not address this additional proposed endeavor, instead limited the decision to the Petitioner's primary endeavor of providing expert witness services for immigrants. On appeal, the Petitioner argues that her business' market analysis advisory services would "attract foreign investment . . . to the [United States], thereby contributing to the development of the local economy" and that her business plan details her business' contributions to attracting such foreign investments. Although the Petitioner and her business plan generally mention her intent to offer market analysis advisory services to U.S. and foreign businesses and the benefits of foreign investment to the U.S. economy, the Petitioner has not provided evidence further describing these services. Instead, the evidence mainly focuses on her proposed endeavor to provide expert witness services for immigrants with a few general statements regarding her proposed market analysis advisory services. Without further evidence describing her proposed market analysis advisory services, we are unable to determine whether such endeavor has substantial merit or is of national importance. Therefore, our decision only addresses the Petitioner's proposed endeavor to provide expert witness services for immigrants.

Even though the Director determined that the Petitioner's proposed endeavor to provide expert witness services for immigrants has substantial merit, the Director found that the Petitioner did not establish that her proposed endeavor is of national importance. Specifically, the Director concluded that the Petitioner did not demonstrate her proposed endeavor would extend beyond her business and clients to have a broader impact rising to the level of national importance or that it would offer substantial positive economic effects as contemplated by Dhanasar. On appeal, the Petitioner claims that the evidence and arguments presented meet the burden of proof by a preponderance of the evidence. She maintains that the Director ignored evidence that establishes the national significance of her proposed business activities, in particular her business plan, opinion letters, national initiatives aligned with her endeavor, letters of interest, and published articles.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the

preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review, the Petitioner has not demonstrated that the evidence submitted establishes her eligibility by a preponderance of the evidence, as discussed below.

The Petitioner argues that her business plan explains how her business will provide "essential services" to an increasing Brazilian population in the United States. With such growing Brazilian population, her business would contribute to helping immigrant workers, entrepreneurship, and foreign direct investments which would impact the local and national economies. She maintains that her business "aligns with broader national goals" that would "benefit immigrants and enhance the U.S. legal system, leading to tangible economic growth and societal benefits . . . ." Her business would reduce domestic violence, assist victims regain stability, and support immigrant entrepreneurs, thereby improving the U.S. economy with increased employment and tax payments. She argues that she submitted sufficient evidence showing her business will provide significant economic benefits to economically depressed areas in Massachusetts, pointing out that the evidence shows the unemployment rates of cities in various Massachusetts cities, as well as an economic impact assessment and community benefit analysis showing how her business "would contribute to local economic development, job creation, and overall community upliftment" in the economically depressed communities.

The Petitioner's statements and a business plan indicate her proposed endeavor has national importance based on potential economic, societal welfare, and cultural benefits to economically depressed communities and the United States. The Petitioner will establish her business in economically depressed cities in the [redacted] Massachusetts area with plans to expand to Florida, California, and Texas by its fifth year of business. By establishing her business in these areas, she claims that her business would "directly address critical national issues like economic revitalization in underprivileged regions and the integration of immigrants into the U.S. workforce." The business plan claims her endeavor's national-level impact through its support of asylum for victims of domestic violence, human trafficking, and crime; its support of U.S. government initiatives that ease asylum restrictions; its inspiration for women entrepreneurship; transferring the Petitioner's expertise and knowledge to the U.S. market; its support of the U.S. economy as a small business; and U.S. economic benefits through job creation and tax payments. The business plan also describes the Petitioner's academic credentials, professional experience, and achievements; recommendations from colleagues and professors; the importance of entrepreneurs; an analysis of asylum in the United States and in Massachusetts; the role and importance of expert witnesses for the legal system and asylum seekers; and the business' projected marketing, staffing, and financial calculations.

The business plan stresses the growth of the Brazilian immigrant population and the importance of expert witness services to vulnerable immigrants seeking asylum and other immigration benefits. While we recognize the importance of supporting human rights and legal immigration and related careers; merely establishing an expert witness services business for low-income immigrants is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889. We acknowledge that safeguarding immigrants and upholding human rights demonstrates substantial merit of a proposed endeavor; however, it does not render a proposed endeavor nationally important under *Dhanasar's* framework, as it does not in itself establish the proposed endeavor's

impact in the field. The issue here is whether the Petitioner has established how her proposed endeavor would affect national legal immigration, human rights, or the U.S. economy more broadly consistent with national importance. The Petitioner has not sufficiently documented the potential prospective impact, including the asserted economic, societal welfare, and cultural benefits to the United States and the areas it intends to serve.

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. We noted that "[a]n 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. at 889. Here, the evidence does not suggest that the Petitioner's work establishing an expert witness services business for low-income immigrants would impact the immigration and human rights fields more broadly, rather than benefitting her business and clients.

In addition to evaluating the endeavor's broad impact to the field, we noted in Dhanasar 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. While any economic activity has the potential to positively impact the economy, the Petitioner has not offered a sufficiently direct connection between her proposed endeavor's activities and its impact potentially having a demonstratable substantial economic benefit to the economically depressed communities in Massachusetts or the nation.

For instance, the business plan projects that in five years the business will hire 14 direct employees, create 29 indirect jobs, pay wages of over one million dollars, and generate almost $200,000 in income taxes. However, the business plan does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence demonstrating that her business' future staffing levels and business activities stand to provide substantial economic benefits to the United States and the communities it will serve. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, it is unclear whether the staffing and financial projections also relate to the Petitioner's other endeavor, market analysis advisory services work. Even if everything the Petitioner claims were to happen, she has not established that creating 14 direct jobs and 29 indirect jobs, paying wages of over one million dollars, and generating $200,000 in income taxes over a five-year period rises to the level of national importance.

While the Petitioner expresses her desire to contribute to the United States, its economically depressed communities, and vulnerable immigrants, she has not established with specific, probative evidence that her endeavor has the potential to have broader implications in the immigration and human rights fields, significant potential to employ U.S. workers, or other substantial positive economic effects in economically depressed areas of Massachusetts or the United States. Statements and claims alone are not sufficient to demonstrate her endeavor has the potential to provide economic, societal welfare, and cultural benefits to the economically depressed communities and the United States. Also, without sufficient documentary evidence that her proposed job duties as chief executive officers of her expert witness services business would impact the immigration and human rights field more broadly, rather than benefiting her business and her clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The Petitioner further argues that the opinion letters from experts in the field confirm the national importance of her proposed endeavor. She claims the letters articulate "the substantial positive economic effects of [the Petitioner's] role as an entrepreneur and as an expert witness." Specifically, she claims that the opinion from an associate professor of strategic management and entrepreneurship at [redacted] shows "the significant role" the Petitioner would have as an entrepreneur and an expert witness in contributing to U.S. economic growth by "aligning with [U.S.] leadership in entrepreneurship, innovation, and business creation." The Petitioner points to the opinion's data on the market size and the increase in demand for expert witness consultants and the importance of entrepreneurs to creating new opportunities and fostering a diverse economy.

The opinion states that the Petitioner's "proposed endeavor as an entrepreneur and an expert witness is a pressing priority for [the United States], particularly, in terms of immigration and human rights and hence an endeavor of substantial merit and national importance." The opinion stresses the growing demand for and importance of expert witness services for individuals seeking immigration relief, and that the Petitioner's expertise and knowledge would contribute to the industry. By extending access to expert witness services to individuals of limited financial resources, the opinion states that the Petitioner's endeavor would enhance societal welfare by protecting a vulnerable population, immigrants who have been subject to domestic violence, human trafficking, persecution, and other crimes. The opinion also explains the importance of immigrants and entrepreneurs to innovation and the growth of the U.S. economy; the importance of providing resources and support to victims of domestic violence and abuse; the increase in the number of individuals seeking asylum and awaiting their hearings; the importance of expert witnesses on the impact of asylum cases; the economic benefits of expert witness services on immigration and human rights; and the growth of the expert witness consulting industry.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. Id. at 889. The opinion's general statements that the Petitioner's business would have a potential prospective impact to the U.S. economy, innovation, business creation, and social welfare are not sufficient to demonstrate the national importance of the Petitioner's proposed endeavor. The opinion focuses on the need for entrepreneurs and expert witnesses for asylum cases, and how the Petitioner's experience makes her capable to provide expert witness services to vulnerable immigrants seeking asylum in the United States, instead of the Petitioner's specific endeavor having a prospective impact in the fields of immigration and human rights. Stating that the Petitioner's work would support an important field with a need for qualified professionals is not sufficient, in and of itself, to meet the "national importance" requirement under the Dhanasar framework. The submission of letters from experts supporting a petition is not presumptive evidence of eligibility. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

The Petitioner submitted another opinion from the associate dean for research and partnerships and professor of law at [redacted] The opinion describes the Petitioner's role in her business, including her expert witness services, training employees, hiring sociologists and analysists from other countries, developing and implementing business strategies, overseeing her business,

recruitment and hiring of employees, and business development. The opinion provides an analysis of the impact of violent crimes on individuals and their communities; the prevalence of domestic violence in Brazil; resources to assist victims of abuse who are seeking asylum or other immigration benefits in the United States; and the positive economic, social, and cultural impacts of immigrants and immigrant entrepreneurs on the United States and Massachusetts. Similar to the opinion discussed above, this opinion also indicates that the Petitioner's endeavor would have substantial positive economic effects and describes the economic benefits of immigration and immigrant entrepreneurs. The opinion claims the Petitioner's endeavor will impact matters that are the subject of national initiatives and names immigration benefits aimed to protect immigrants, refugees, and asylum seekers. The opinion also claims that the Petitioner's endeavor will enhance individual and societal welfare and describes how immigration promotes cultural diversity, improves human rights, addresses a shortage of workers, improves standards of living, enhances social services, and strengthens family ties.

We recognize the importance of providing services to immigrants, particularly victims of human rights violations, domestic violence, human trafficking, and other crimes, as well as the significant contributions from immigrants who work in the United States and who have become successful entrepreneurs. However, merely working in the expert witness field or starting an expert witness and market analysis advisory services business for vulnerable immigrants is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of a field or the need for workers in a specific industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we 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.

The Petitioner further claims her endeavor aligns with national initiatives by directly supporting U.S. immigration legislation, such as legislation relating to the Violence Against Women Act, U nonimmigrants, and cancellation of removal. By contributing to implementation of these laws, the Petitioner argues her work will bolster the legislations' intended impact on vulnerable immigrant communities and the legal system. While the importance of the U.S. government initiatives and legislation is not in dispute, their overall significance does not establish the national importance of the Petitioner's proposed endeavor. The support of immigrants and victims of domestic violence, human trafficking, and other crimes are important to the U.S. economy and societal welfare, but it does not follow that an individual providing expert opinion services for individual immigrants has national importance. Working in or establishing a business in an important field is insufficient on its own to establish the national importance of the proposed endeavor. The Petitioner does not quantify the proposed endeavor's expected impact in the identified areas of concern, or provide objective, probative evidence to support her contentions. Although the Petitioner has shown that supporting immigrants and victims of domestic violence, human trafficking, and other crimes are nationally important issues, she has not demonstrated the potential prospective impact of her specific endeavor to such nationally important matters.

To further show the national importance of her proposed endeavor, the Petitioner argues that a recommendation letter from her professor shows her "significant academic contributions and potential impact on U.S. academic and professional communities in Brazilian history and human rights." She

claims the letter attests to her expertise, as well as the importance of her endeavor in national education and social priorities. The professor explains her participation in reviewing the Petitioner's thesis and her work contributions to Brazilian historical works, including the Petitioner's authored work relating to the history of the Department of Political and Social Order and political police agencies in Brazil. The professor attests to the Petitioner's ability to conduct research, analyze data, and communicate her findings. This recommendation letter and other similar letters from the Petitioner's research and professor colleagues explain the Petitioner's academic work, her research skills, and knowledge of Brazilian history, while also expressing that her knowledge would be valuable to the success of her expert witness services business.

The Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate her claims of her proposed endeavor providing broader impact in her field rising to the level of national importance. While the Petitioner's professors and colleagues generally attest to the Petitioner's research and communication skills and her dedication to historical analysis, the content of these letters relates to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Petitioner's proposed endeavor. The second prong of the Dhanasar framework "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong and she has not submitted sufficient documentary evidence to establish that her proposed job duties as chief executive officer of her expert witness services business would impact the immigration and human rights fields more broadly, rather than benefiting her business and her clients. See id. at 889.

On appeal, the Petitioner takes issue with the Director's analysis of a letter of intent to hire the Petitioner. She maintains that the letter of intent from a non-profit organization shows that a quasi-governmental entity has demonstrated an interest in working with the Petitioner, thereby substantiating her credibility and aligning her endeavor with national interests. We acknowledge that evidence of interest from government or quasi-government entities may help show the national importance of a proposed endeavor under *Dhanasar's* first prong. See generally 6 USCIS Policy Manual 5(D)(3), https://www.uscis.gov/policy-manual. However, the Petitioner does not explain or provide evidence showing that the letter of intent is from an interested government or quasi-governmental entity, such as a federally funded research and development center. See generally id. Instead, the Petitioner indicates the letter is from a non-profit organization. The record also includes additional letters of intent, including a letter from an attorney who is interested in her expert witness services. However, because the letters are not from government or quasi-government entities, they do not necessarily show that her endeavor has the potential to impact matters of national interest or rises to the level of national importance.

Lastly, to demonstrate her proposed endeavor is of national importance, the Petitioner argues that she submitted articles describing the "pivotal role" expert witnesses have in legal proceedings and in aiding attorneys understand complex issues. She maintains her expert witness services would provide "critical knowledge about country conditions, contributing to immigrants' claims for asylum or relief." The record includes reports and articles relating to rural counties facing decreases in population; immigrants benefiting rural communities; economic benefits of immigration; cultural organizations promoting diversity of cultural expressions; benefits of immigrant entrepreneurs; Brazilian immigrants in the United States; and the role, history, and benefits of expert witnesses. As discussed earlier, while

we recognize the importance of expert witnesses in the legal system and related careers, and the significant contributions from immigrants, the Petitioner's proposal to work in the immigration and human rights fields and starting an expert witness services business are insufficient to establish the national importance of her endeavor. The industry reports and articles submitted describe the benefits of immigration and do not discuss any projected benefits specifically attributable to the Petitioner's proposed endeavor that rise to the level of national importance as contemplated by Dhanasar.

Based on the above, the Petitioner has not demonstrated that her proposed endeavor has the potential to extend beyond her business and her future clients to impact the immigration and human rights fields or the economy or societal welfare more broadly at a level commensurate with national importance. Moreover, she has not demonstrated that the work she proposes to undertake offers innovations that contribute to advancements in her industry or otherwise has broader implications for her field, the economy, or societal welfare. As a result, the Petitioner has not established that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong.

III. CONCLUSION

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver as a matter of discretion. The identified basis for denial is dispositive of the Petitioner's appeal, therefore we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments regarding the second and third prongs under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting 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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.