U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185367

Date: JUNE 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and business consultant in the field of strategic management, 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 record establishes that the Petitioner qualifies as a member of the professions holding an advanced degree, but did not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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:

- 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.

II. ANALYSIS

A. EB-2 Classification

The Petitioner is an entrepreneur and business consultant in the field of strategic management. She submitted a master's degree in planning and strategic direction from [redacted] in Ecuador. The record also shows she has a degree in hotel management and tourism. The Petitioner's diplomas and transcripts are accompanied by an academic evaluation which states that her degrees are equivalent to a U.S. master's degree in strategic management and a U.S. bachelor's degree in hotel and tourism management. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree and we agree.

B. National Interest Waiver

1. Substantial Merit

The 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. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner states her proposed endeavor is to open her own business consulting company, "[t]o provide consulting services to assist Latin American women entrepreneurs within the United States, with a special focus on businesses that promote sustainability and environmentally friendly practices." The Petitioner further states that her main goal is to "foster and grow American entrepreneurship within the United States." She wants to financially and educationally empower underserved populations to promote personal growth and economic stability and promote gender equality and women's empowerment to help mitigate the well documented gap in women's entrepreneurship. The record contains industry articles and reports on the importance of small businesses, the challenges that face women entrepreneurs, the Latin American community, and their impact on the economy, along with and government initiatives related to the Petitioner's industry. We conclude that the proposed endeavor has substantial merit.

[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).

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner asserts that the Director's decision, "[c]ontains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." The Petitioner also contends that the Director did not discuss all elements of the evidence and that this directly disadvantaged the Petitioner. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did not demonstrate that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The record contains several industry articles and reports that relate to the industry in which the Petitioner seeks to work. The Director concluded, "[w]hile the provided documents provide useful background information, they are of limited value in this matter, as none of them address the petitioner's proposed endeavor." The Petitioner asserts that, "[e]ven if. . . the articles provided did not refer directly to the Petitioner's endeavor, it becomes clear that the intention of the U.S. government is to encourage projects, programs, and endeavors aimed at reaching the objective of improving the resources available for Latino and Latino Women's business, thereby the Petitioner's endeavor is exactly what the Executive Order is promoting and establishing as a need." 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 specific endeavor that the foreign national proposes to undertake." *Dhanasar* 26 I&N Dec. at 889. While the industry reports and articles in the record show the U.S. government's interest in industries related to the proposed endeavor and while we recognize the value and importance of the industry, working in the field is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of her proposed endeavor. For example, the Petitioner refers to, and the record reflects, various articles and reports from the Office of Women's Business Ownership, along with Executive Orders to advance equity and Latino entrepreneurship. Although it appears the Petitioner's proposed endeavor does relate to these government initiatives, the record focuses on the broader industry importance and impact, instead of the prospective impact of the Petitioner specific proposed endeavor.

The Petitioner asserts several sources were submitted to show the importance and impact of small and medium sized enterprises as they relate to job creation and the national economy. *Dhanasar* states, a proposed endeavor could rise to the level of national importance with, "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890. In addition, a proposed endeavor, "may have national importance because it has national or even global implications within a particular field, such as certain improved manufacturing processes or medical advances." *Id.* at 889. The Petitioner asserts that by aiding small and medium sized businesses, she will contribute to economic growth and job creation. However, showing the impact small and medium sized businesses have on job creation and the economy does not directly show how her specific proposed endeavor will significantly impact job creation or the economy. Here, the record does not establish that her proposed endeavor will impact the industry

more broadly or have substantial positive economic effects, particularly in an economically depressed area to impact more than her prospective clients.

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. *Dhanasar* 26 I&N Dec. at 893. The Petitioner states in her proposed endeavor statement that she will provide consulting and advisory services to help Latin American business entrepreneurs in the United States improve and optimize their business practices in economically viable and sustainable ways. The Director concluded that the record does not show the Petitioner's proposed endeavor would "operate on such a large scale, and sufficiently affect or advance the field or industry more broadly- or have wider implications in the field, rising to the level of having national importance." We agree that the record does not establish the scale of her work would rise to the level of national importance or that there are any advances or improvements in the field attributable to the Petitioner. Therefore, as the record does not establish the broader impact of the Petitioner's specific endeavor, we agree that the record does not establish the proposed endeavor will have broader implications beyond her prospective clients.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because 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 *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.