U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31659967

Date: JUN. 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 a waiver of the required job offer and thus of the labor certification, would not 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

- 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 job offer requirement would benefit the United States.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

The Director determined that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. The sole issue before us is whether the record establishes that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

The Director concluded in the denial that the Petitioner's prospective endeavor has substantial merit and is of national importance under *Dhanasar's* first prong, but also determined that the Petitioner did not satisfy the second and third prongs of the *Dhanasar* framework. For the reasons discussed below, we withdraw the Director's determination that the Petitioner has established the national importance of her proposed endeavor. Based on our de novo review of the record, we conclude the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong and that she is well-positioned to advance it under the second prong. While we may not discuss every document submitted, we have reviewed and considered each one.

A. National Importance

The first prong of the *Dhanasar* analytical framework, 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 determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner described her intended employment as a real estate developer in the United States, as follows:

> [My] proposed endeavor is to build a company dedicated to real estate development with an emphasis on developing energy efficient housing designs in the U.S. Specifically, [she] will work with the necessary actors to help develop environmentally friendly homes in the city of [redacted] to expand the housing market and combat climate change. Her work will generate sufficient methods for reducing environmental impact while promoting infrastructure growth.
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> . . .
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> My proposed project will have the direct benefit of reducing the environmental impact and make energy savings more efficient, which in the future will allow consumers to reduce costs of energy services and combat climate change. In this way, the residents of [redacted] will be able to acquire energy efficient houses, with excellent finishes that have air conditioning and electric infrastructure with newer and optimal technologies. These new technologies include the use of photovoltaic solar panels, improvement of the thermal insulation, use of effective ventilation systems, as well as intelligent air conditioning systems in the construction of houses.

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 Dhanasar*, 26 I&N Dec. at 889. 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.* 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. Further, 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.

The Petitioner provided reports and articles in support of the petition discussing certain aspects of the housing market in the United States, such as the need for more affordable housing, a sustainable housing infrastructure, increases in private investment in real estate development, and other material which discuss "green building" strategies. While this documentation material provides general information related to the field in which the Petitioner intends to work and suggests that her endeavor has substantial merit it does not provide insight into her specific plan to operate a real estate development company or show how this endeavor would have a potential prospective impact of national importance.

The Petitioner's business plan provides industry statistics regarding the growth of the "green [housing] market" and takes note of recent successes in the development of wind and solar energy technologies which provide a "clean power pipeline for "customers [who] want a house with greater performance that consumes less energy." However, her plan does not specifically address the means by which she will build or remodel homes, and how she will incorporate green energy advances into her building projects to a greater extent than other home builders and remodelers actively engaged in real estate development within her target market.

We conclude the Petitioner has not adequately explained or demonstrated how her vaguely described home building and remodeling strategies differs from or improves upon those readily available and already in use in the United States. The business plan provides information about her proposed endeavor, indicating that she will invest $350,000 into her business, and will hire three employees by the end of her company's fifth year of operation, to include a handyman, an administrative assistant, and an accountant. Notably, while she projects that her firm will construct 9 homes and complete 24 home remodeling projects by its fifth year, her plan does not call for the hiring of home construction personnel such as carpenters, electricians, roofers, or plumbers, either through direct hire by her company or on a contract basis with other construction firms.

While the Petitioner asserts that she "will work with the necessary actors to help develop environmentally friendly homes in the city of [redacted] to expand the housing market and combat climate change," her business plan does not sufficiently address who these "necessary actors" are, how she will acquire their services, and how they will incorporate "new technologies include the use of photovoltaic solar panels, improvement of the thermal insulation, use of effective ventilation systems, as well as intelligent air conditioning systems in the construction of houses." The Petitioner must resolve this inconsistency and ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Collectively considering the evidence in the record, the Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. Although the Petitioner claims that her company will positively benefit the United States by increasing housing development to address housing shortages, it is not clear how a business of the size and scope described in the business plan would address housing shortages for the number of people that would constitute an impact on a national level. Also unclear is how a business employing three people by its fifth year of operation would positively impact a given region in which either its employees or clients are located. The Petitioner has not provided sufficient evidence to show that she would employ a significant population of workers in a particular region, nor has she shown that her proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue.

Further, the testimonial evidence in the record, such as the recommendation letters, do not analyze the proposed endeavor or offer evidence of its impact. The Petitioner's statements contain assertions that her work will "support[] the furtherance of U.S. environmental goals with respect to infrastructure development," but she provides little to no information on how her endeavor will operate on a scale that would significantly impact our nation's environmental goals, nor does she provide detailed information about how her services "are vital for improving the health and living standards of communities and their economic prospects through the management of energy efficient housing designs." The Petitioner's assertions, without evidence to substantiate them, do not establish her eligibility. Any basic economic activity has the potential to positively impact the economy and social welfare; however, the Petitioner has not offered a sufficiently direct connection between her proposed endeavor activities and any demonstratable societal welfare. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The record does not contain an evidentiary basis to conclude that the effects of her specific proposed endeavor will rise to the level of national importance. For these reasons, the Petitioner has not met *Dhanasar's* first prong.

B. Well Positioned to Advance the Proposed Endeavor

We agree with the Director's ultimate conclusion that the record does not establish the Petitioner was well-positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor, we review the following and any other relevant factors:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

It is not apparent from the evidence how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate that the well positioned the Petitioner is to advance their proposed endeavor. The record reflects that the Petitioner holds the foreign equivalent of a master's degree in business administration, and that she has years of experience working for a

government-controlled oil company in her home country, where she performed services largely focused on the procurement of "spare parts, supplies, and accessories" required for her foreign employer's oil drilling and refinery operations. However, the evidence provided does not persuasively reflect how the Petitioner's prior performance of the duties described in the experience letters is either a similar effort as that of their proposed endeavor (building and remodeling residential homes that utilize clean energy technologies) or how it constitutes a record of success in the residential real estate development industry. For instance, the letter from [redacted] (J-) states, among other things:

> The great professional performance of [the Petitioner] as Corporate Head of Purchasing, Contracts and Imports, allowed the maintenance programs of the refineries to be executed in the committed time. . . [she] has a deep knowledge of public contracting and business administration. Due to [her career with the oil company she can] work in a team and has leadership skills, skills that I consider will be very important tools that will allow [her] to obtain successful results in [her] project that [she] plans to develop in the United States.

Notably, J- does not describe the Petitioner's specific endeavor in any detail, nor does she adequately explain how the Petitioner's experience at the oil company renders her well positioned to operate a residential real estate development company. While the letter writers appear to hold the Petitioner in high regard, the submitted letters do not provide sufficient information regarding the specific endeavor that the Petitioner will engage in or explain how her previous work experience renders her well positioned to pursue her proposed endeavor under *Dhanasar's* second prong.

As discussed above, the Petitioner submitted a business plan that vaguely outlines her future real estate development activities. For the sake of brevity, we incorporate our previously stated concerns regarding the plan's lack of detail and the unsupported assertions therein about how the Petitioner intends to build and remodel residential homes in the United States. *Chawathe, supra.* Importantly, the record does not reflect any progress to achieving the proposed endeavor. Without a sufficiently detailed explanation about how the Petitioner intends to operate and accomplish the core activities typically associated with a residential real estate development firm, the Petitioner's stated intention to establish her company and the letters from individuals expressing interest in investing in her company, when taken together, are not persuasive evidence of the endeavor's current or prospective progress. *Id.*

A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *see also* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). Here, the evidence in the record does not sufficiently describe how well situated the Petitioner would be to advance her proposed endeavor.

III. CONCLUSION

As the Petitioner has not established that she meets the first or second prong of the *Dhanasar* framework, she is not eligible for and otherwise merits a national interest waiver. Consideration of the remaining *Dhanasar* prong would serve no legal purpose so we will reserve this issue. *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). As the Petitioner has not met the requirements of the *Dhanasar* analytical framework, we find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.