U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30043614

Date: MAR. 5, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. *See* 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). 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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established

eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the endeavor as a "plan to open my own business in the US . . . in the field of business consulting." The record contains a copy of a business plan for the Petitioner's business consulting company, which it indicates is "based in [redacted] California." The business plan describes the company's services as "general business consulting services" and a five-week "critical thinking and business strategy" program, offered either in person or online, and it references "entrepreneurs wanting to enhance their business and achieve growth" as the company's target clients. The business plan asserts that the Petitioner "will serve as the Chief Executive Officer (CEO) and Business Coach," with one additional consultant and marketing specialist for a total of three workers, including the Petitioner, in the first year of operation, increasing to four consultants, two marketing specialists and sales representatives, and one administrative assistant for a total of 10 workers within the first five years of operation. The business plan also asserts that the company "will lead to the creation of an additional 20 indirect jobs according to the multipliers provided by the [Economic Policy Institute]."

The Director concluded that the record establishes the proposed endeavor "has substantial merit." However, the Director observed that "the record does not show through credible, supporting documentation how the [Petitioner's] anticipated entrepreneurial services stand to sufficiently extend beyond the particular companies or individuals who may utilize her services to impact the field, industry, or the U.S. economy more broadly at a level commensurate with national importance." The Director acknowledged the business plan's projection of hiring 10 workers, including the Petitioner, and the company's anticipated tax generation; however, the Director noted that the Petitioner "has not submitted sufficient evidence to demonstrate the creation of these jobs and taxes to be paid will rise to the level of the 'significant' economic effects contemplated in the *Matter of Dhanasar* as establishing national importance." Based on those evidentiary deficiencies, the Director concluded that the Petitioner "has not established that the proposed endeavor is of national importance," as

required by the first *Dhanasar* prong. *See id.* The Director further concluded that the record does not satisfy the second and third *Dhanasar* prongs. *See id.*

On appeal, the Petitioner reiterates information in the business plan regarding the business consulting services and training her company would provide and the 10 total workers, including the Petitioner, the company would hire within the first five years of operation. The Petitioner also reiterates generalized information regarding "the U.S. business coaching industry," and she asserts that her startup business consulting company would have national importance. The Petitioner also discusses information pertaining to the endeavor's merit, for which the Director made a favorable conclusion.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's references to generalized information regarding "the U.S. business coaching industry" do not establish how the proposed endeavor may have national importance. Again, in determining national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake," not the importance of the industry, field, or profession in which an individual will work. *See id.* at 889.

The services the Petitioner's company would provide appear to benefit the company's potential clients and customers. However, the record does not establish how the proposed endeavor may have national or even global implications within the particular field of business consulting, business administration more generally, or any other particular field, "such as those resulting from certain improved manufacturing processes or medical advances" or other broader implications. *See id.* In turn, the record does not establish how employing three or even 10 workers in [redacted] California, with the respective positions addressed in the business plan, demonstrates a "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *See id.* at 889-90. Likewise, the record does not establish how the 20 indirect, unspecified jobs in unspecified locations the business plan anticipates will result from the proposed endeavor indicates a significant potential to employ U.S. workers. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.