U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29547847

Date: MAR. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant, 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 immigrant 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she 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 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 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 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 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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.

Id. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of *Dhanasar*.[3] We agree with the Director.

Although the Petitioner asserts on appeal that the Director's decision "contains numerous erroneous conclusions of both law and fact," she does not indicate where the Director misapplied law or policy in the decision. The Petitioner mainly contends that she has previously provided sufficient evidence to show the national importance of her proposed endeavor.

In determining whether the proposed endeavor has national importance, we focus on the "specific endeavor that the foreign national proposes to undertake" and consider its potential prospective impact. *Id.* at 889. We noted that "we look for broader implications" of the proposed endeavor and 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 889-90.

The Petitioner's professional plan dated May 2020 states she intends to work as an accountant and "provide a variety of services, analyzing accounting data, preparing reports, including internal and external auditing, setting up accounting systems, preparing and analyzing financial statements, managing budgets, providing advice related to accounting and financial advice for any type of company, contributing to their growth." In response to the Director's request for evidence (RFE), the Petitioner submitted an updated professional plan dated February 2023 and expanded her proposed activities to include the following:

> I intend to implement my refined set of skills focusing on the company's financial health by serving in the areas of accounting, finance, controllership, planning and budget management, internal and external audits, and compliance. I will employ my experience in management and leadership and my knowledge of international accounting standards (US GAAP and IFRS) to stimulate exponential growth in organizations in the United States.

[2] The Director's finding on this issue is in the request for evidence (RFE) issued on December 9, 2022. The Petitioner submitted a degree in accounting with academic transcripts and credential evaluation showing that this foreign degree is equivalent of a U.S. bachelor's degree, along with employment letters demonstrating that she has five years of post-baccalaureate experience in the specialty.

[3] The Director also found that the Petitioner did not meet the second or third prong of the *Dhanasar*'s analytical framework.

However, the Petitioner's discussion of her proposed activities entails typical work of an accountant, and the evidence as submitted does not demonstrate that her accounting techniques or innovations are unavailable in the United States or better than that which is already offered in the United States. While individual employer or company may benefit from her accounting services, the Petitioner has not offered any evidence or persuasive explanation for how this individual benefit rises to the level of national importance or will impact the field more broadly. In *Dhanasar*, "[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.

We reviewed the Petitioner's resume and letters of recommendation from her former co-workers. The authors of the letters praise the Petitioner's abilities an accountant, and the personal attributes that make her an asset at the workplaces. While the recommendation letters evidence the high regard for the Petitioner and her work, they do not discuss the Petitioner's proposed endeavor or specific impact of her endeavor.

The Petitioner also submitted two expert opinion letters, one from [redacted] a professor of finance at the [redacted] University, and [redacted] an assistant professor of accounting at [redacted] University. Professor [redacted] speculates on how the Petitioner's endeavor as an accountant can potentially improve the finance sector in the United States and help "U.S. companies successfully navigate the myriad complex regional trading laws and bureaucracies, as well as advising on the best investments and methods to alleviate the hefty taxes levied by Brazil on imported goods and services." However, the Petitioner has not submitted any plans to assist U.S. companies in trading with or investing in Brazil. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.*

The expert letter from Professor [redacted] describes the growing demand for accounting professionals and the Petitioner's past experiences but does not address how her endeavor will broadly impact the field of accounting. Although the letter generally states that "accountants can help organizations be more efficient, save money on taxes, reduce stress and help organizations make better financial decisions," it does not offer persuasive details concerning the Petitioner's endeavor or its impact extending beyond companies that she will serve. Hence, the advisory opinions are of little probative value as they do not meaningfully address the details of the proposed endeavor.

The Petitioner further contends that her proposed endeavor is nationally important based on reports and articles about the industry in which she proposes to work. The Petitioner explains that rapidly growing finance industry is facing a talent shortage and there is a growing demand for accounting professionals who are integral to the business sector's success. The Petitioner also claims that she will "positively impact society by promoting improved Corporate Social Responsibility (CSR) practices" and is "already impacting the US by working as a Budget Analyst in the [redacted] an organization that assists youths who face difficulty in school. We acknowledge that assisting any companies with financial reporting and audits has substantial merit. However, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor.

Here, the Petitioner claims that her proposed endeavor will help companies to "improve their revenue controls and accounts receivable collection" and "increase their cash flow and allow them to invest in the research and development, expansion, and other business activities contributing to the economy's growth." While any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how working for a company or companies as an individual accountant[4] generates such significant economic activity that rises to the level of "substantial positive economic effects." *Dhanasar*, 26 I&N Dec. at 890. The Petitioner also emphasizes her knowledge, skills, education, and experience but they are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* 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. Similarly, we conclude that the Petitioner has not established that her proposed endeavor has national importance.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner 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 *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 *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.

[4] The Petitioner submitted various job offer emails but does not contend that she plans to work for all the companies that demonstrated interest in hiring her services.