U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36992903

Date: MAR. 17, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing professional consultant, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Petitioner did not establish 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are 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. 8 C.F.R. § 204.5(k)(2). 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. Id.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that 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 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

In the initial filing, the Petitioner asserted that she qualifies for the underlying EB-2 visa classification both as an advanced degree professional and as an individual of exceptional ability in the sciences, arts, or business. The Director determined the Petitioner was an advanced degree professional. We disagree.

The Petitioner's academic documents establish that she obtained the foreign equivalent of a U.S. bachelor's degree in marketing in December 2015, which was conferred to her in April 2016.[2] While the Petitioner may establish the equivalent of a master's degree by demonstrating she has the foreign equivalent of a U.S. bachelor's degree followed by five years of progressive experience in the specialty, she has not made such a showing. The relevant time period to be considered is her experience following the acquisition of her degree until the date of filing, January 2023. See 8 C.F.R. § 204.5(k)(2) (providing that a U.S. baccalaureate degree or a foreign equivalent followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree) (emphasis added), 8 C.F.R. § 103.2(b)(1) (stating, in relevant part, eligibility must be established at time of filing). While we acknowledge the Petitioner submitted documentation of employment, such evidence must be in the form of letter(s) from current or former employer(s) including the name, address, and title of the writer, and a specific description of the duties the petitioner performed. 8 CFR § 204.5(g)(1). For the relevant time period, the Petitioner did not submit evidence demonstrating she has at least five years of progressive experience in the specialty meeting the requirements of 8 CFR § 204.5(g)(1). For example, the letter dated September 2022 from Mega

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

[2] The Petitioner has not demonstrated she has a U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). The Petitioner submitted a certificate demonstrating she enrolled in a lato sensu course from July 2020 to August 2022 titled, "Digital Marketing." Information from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE) provides:

> Professional development and specialization programs are considered lato sensus (wide sense graduate-level programs) and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees. They require 1 to 2- or 1- to 3- years of study.

We consider EDGE to be a reliable source of information about foreign credential equivalencies. See Confluence Intern., Inc. v. Holder, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); Tisco Group, Inc. v. Napolitano, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); Sunshine Rehab Services, Inc. No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also Viraj, LLC v. Holder, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

Electronics attesting to the Petitioner's work in its marketing department does not have a specific description of the duties she performed. The Petitioner does not assert that evidence in the form of letters meeting the requirements of 8 CFR § 204.5(g)(1) is unavailable. For these reasons, the Petitioner has not established that she is an advanced degree professional and we withdraw the Director's determination to the contrary.

The Director's decision did not analyze whether the Petitioner meets the underlying EB-2 visa classification as an individual of exceptional ability in the sciences, arts, or business. Because we conclude below that the Petitioner has not established the national importance of her proposed endeavor under *Dhanasar's* first prong, which is dispositive of this appeal, we reserve the issues of whether she has established her eligibility for the underlying EB-2 visa classification as an individual of exceptional ability, and whether she has demonstrated she meets the second and third Dhanasar prongs. 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).

B. National Interest Waiver

Dhanasar's first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. Matter of Dhanasar, 26 I&N Dec. at 889. The Petitioner's initial proposed endeavor was to work as a marketing consultant. In response to the Director's request for evidence, the Petitioner elaborated that she intends to operate a marketing and advertising agency in Orlando, Florida and submitted a business plan. The Director concluded the Petitioner's endeavor has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. "We look for broader implications" of the proposed endeavor and explained that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. at 890. 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.

As stated, the Director determined the Petitioner had not established her proposed endeavor was nationally important and explained the evidence, including her business plan and statement, did not demonstrate how working for her own company in the marketing and advertising industry would, as claimed, benefit the United States through increased income, employment of U.S. workers, and contribution to the country's gross domestic product to reach the level of substantial positive economic impact as contemplated by Dhanasar. The Director further concluded that the Petitioner's evidence also did not demonstrate how her proposed endeavor would have national or even global implications within her field.

On appeal, the Petitioner includes a brief, her business plan, an expert letter, and articles. The Petitioner asserts, in relevant part, the Director incorrectly assessed the national importance of her proposed endeavor and overlooked evidence, specifically her business plan and expert letter. She does

not identify what part of her business plan the Director overlooked. Moreover, the Petitioner's expert letter merely raises the same claims as her business plan. According to the author of the letter, the Petitioner's endeavor has significant potential to employ U.S. workers and has other substantial positive economic effects. However, in coming to this conclusion, the author relies on data from the business plan, claiming, for example, the Petitioner's company will have 17 employees by year five with payroll expenses at $1.8 million. However, the Petitioner did not provide the basis for her projections in her business plan or in the remaining record, nor did she establish the import of such data and that such future employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either to th[redacted]lorida region or the U.S. economy more broadly at a level commensurate with national importance. Id. at 890.

The author also asserts the Petitioner's skills and background align with national priorities related to economic development and technological advancement. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the Dhanasar framework, which shifts the focus from the proposed endeavor to the foreign national. Id. In our analysis of prong one, our focus is on the specific endeavor that the individual proposes to undertake. Id. at 889.

In addition, the author contends that the Petitioner's business will enhance societal welfare by, for example, leveraging innovative strategies to address unique challenges of the U.S. market, and adding that it will impact such areas as digital marketing and sustainable marketing practices, a matter important to national initiatives. The Dhanasar decision contemplates 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 893. However, the Petitioner has not established the extent to which her proposed endeavor's methods or strategies improves upon those already available and in use in the United States such that her proposed endeavor would have national or global implications within her field or for the United States. Further, merely working in an important field is insufficient to establish the national importance of the Petitioner's proposed endeavor. See id. at 889 (explaining that in determining national importance, we do not focus on the importance of the field, industry, or profession in which the individual will work but on "the specific endeavor that the foreign national proposes to undertake").

The Petitioner's appeal brief raises the same arguments in the expert letter and adds that her proposed endeavor will solve occupational shortages. However, an alleged shortage of occupations or occupational skills does not render a proposed endeavor nationally important under the Dhanasar framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. The brief also alleges that the Petitioner's endeavor includes engaging in educational initiatives to share knowledge and best practices. In Dhanasar, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact her field more broadly. Id. at 893. Further, the record does not demonstrate that, beyond the limited benefits provided to her prospective clients and employees, the

proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

III. CONCLUSION

We withdraw the Director's determination that the Petitioner is an advanced degree professional. Further, we agree with the Director that the Petitioner has not established the national importance of her proposed endeavor and the Petitioner has not established prong one of *Dhanasar's* framework. Consequently, the Petitioner has not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

ORDER: The appeal is dismissed.