U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29048363

Date: MAR. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal professional, 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.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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. 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a personal statement submitted with the petition, the Petitioner stated that she practiced law in Brazil and intends to continue her activities as a legal professional in the United States, specifically noting that she hopes to become a U.S. lawyer. In addition to her statement, the Petitioner submitted copies of her academic credentials and letters of recommendation in support of her eligibility for a national interest waiver.

The Director issued a request for evidence (RFE), noting that her initial filing did not establish that the proposed endeavor had substantial merit or national importance. The Director observed that although the Petitioner's statement appeared to suggest that she intended to practice law, she did not provide specific insight as to what she intends to do in the United States. Consequently the Director requested a detailed description of the proposed endeavor so that the Petitioner's request for a national interest waiver could be evaluated under the *Dhanasar* framework.

In response, the Petitioner indicated that she intends to serve as a lawyer and legal controller in the United States, and stated that she will "[provide] her specialized services in the management, control, and administration of law firms and legal departments of small and medium-sized companies to impact the field through innovation in the United States" by serving as the CEO of her own company, [redacted]. She also stated that her company, which will be established in Massachusetts, will deliver specialized services to law firms and businesses requiring overall management assistance.

She further stated;

> I will work for law firms and companies from the most varied sectors of the economy in their internal legal departments, exercising essential leadership functions for the good of running the office and assisting in solving problems, serving as a liaison between lawyers, paralegals, and clients. And considering that I can fluently speak English, Portuguese, and Spanish, I will be able to provide services specifically for the

> Brazilian and Latin American communities residing in the United States, in addition, obviously, to the American population.
>
> I will actively participate in conducting and mentoring the demands presented in the business context to review, analyze, and determine the best strategies in management and good positioning in the market. My consultancy is provided through an in-depth study of the business situation and establishment of the strategic points to be worked on, creating a plan of administrative and financial management solutions, and seeking to introduce improvement techniques to resolve conflicts and meet clients' interests.
>
> I will analyze each clients' business structure and provide well informed advice regarding the most suitable solutions in business management, risk management, human resources, finance, and marketing, and how to develop a healthy and stimulating work environment.
>
> Acting as a chief executive officer, I will contribute to the further development of the United States through my remarkable skills in leadership and management to be offered to law firms and to companies of all sectors of the economy in their legal departments. Thus, I will support the growth of U.S. companies and the wider economy by helping domestic businesses optimize their own operations using the latest advancements in business overall management.
>
> By helping U.S. companies in the legal segment achieve increased customer satisfaction with their products and services, greater market share, and significant cost reduction, I will directly impact corporate growth in the legal segments, increasing companies competitiveness and profitability, generating new jobs, and operational and economic benefits for businesses and for the U.S. economy in general.
>
> Additionally, I will advise families or individuals on the most important financial questions related to personal finances that will further contribute to the clients' stability over the coming years. For these purposes, I am in the process of acquiring a license for financial consulting which will prove favorable for the further operations of [my company].

She further stated that her specific consulting services will include business management, financial management, human resources, business process restructuring, marketing, family and personal financial consultancy. Regarding the impact of her proposed endeavor, she stated that her endeavor "has the potential to employ American workers and provide other positive economic effects for the nation, and the benefits accruing from the proposed endeavor to the regional and national economy will reach the level of substantial economic effect in a positive way."

The Petitioner also submitted a copy of a March 2023 business plan for her consulting company and additional reference letters in support of her eligibility for a waiver of the job offer.

In denying the petition, the Director determined that the Petitioner demonstrated the proposed endeavor's substantial merit, but did not provide sufficient evidence to establish the proposed

endeavor's national importance. The Director determined that the Petitioner had not shown that her proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner provides a brief emphasizing the importance of business consulting and the manner in which she can provide services to a wide range of clients. She further asserts that her services will provide substantial benefits to individuals, corporations, and the U.S. economy.

Preliminarily, we note the Petitioner's initial description of her proposed endeavor did not include plans to form her own consulting company and serve as its CEO, nor did she indicate that she planned to obtain a license to provide financial consulting services. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). While not raised by the Director, the Petitioner introduced a new proposed endeavor in response to the RFE rather than establishing the substantial merit and national importance of the proposed endeavor described in the initial petition. The Petitioner's proposed endeavor to establish and direct a consulting company was presented after the filing date and cannot retroactively establish eligibility.[2] If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. *See* 8 C.F.R. § 103.2(b)(1). Therefore, on appeal, we will consider if the record demonstrates that proposed endeavor submitted with the initial filing, working as a legal professional/lawyer, has substantial merit and national importance. We conclude it does not.

As stated above, the Petitioner initially indicated that she intends to engage in legal services and ultimately practice law in the United States. In the RFE, the Director noted that the Petitioner failed to provide sufficient detail regarding her proposed endeavor to show that it was of substantial merit. While the Director ultimately concluded that the Petitioner's new endeavor as presented in the RFE response has substantial merit, her plans to form her own consulting company and serve as it CEO constitutes a material change to the petition and will therefore not be considered. Upon review, the Petitioner's endeavor as initially stated includes only vague references and generic descriptions of the occupation of legal professional/lawyer and the field of law. Per our decision in *Dhanasar*, it is the substantial merit of the specific endeavor that must be established, not the merits of an entire field or industry. The Petitioner has not shown that her original proposed endeavor is of substantial merit in the field of law.

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 "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

[2] The petition in this matter was filed in August 2022. The Petitioner's business plan is dated March 2023, approximately seven months after the petition's filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

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.

To the extent that the Petitioner's proposed endeavor can be understood, we conclude that she has not substantiated how her specific work as a legal professional, and ultimately a lawyer, will positively impact the economy. Specifically, how one legal professional/lawyer will trigger substantial positive economic impacts has not been explained. The Petitioner has not provided sufficient information of how her work performing services in the legal field would rise to the level of national importance. While such an endeavor may impact her employers or the individual clients she assists, the national importance of this work has not been adequately explained or substantiated. Similarly, 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 her field more broadly. *Id.* at 893.

Throughout the record, the Petitioner points to her background, education, and experience in her field, as well as her commitment to faith and social services. The Petitioner provided numerous letters of support, both prior to adjudication and again on appeal, that discuss her character and faith as well as her legal capabilities and experience.[3] Although the authors describe the Petitioner's good character, skills, education, and experience, they do not provide sufficient detail concerning the impact of her proposed endeavor or how such impact would extend beyond the clients she will serve. Moreover, to the extent that they describe her experience, we note that the Petitioner's knowledge, skills, and experience in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. 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. While the evidence indicates that she is an experienced attorney in Brazil who appears to be well-respected by her colleagues and acquaintances, the record does not contain evidence that the Petitioner's past achievements resulted in a broad impact on the legal field. We also note that while a petitioner's past work and achievements may be helpful in illustrating how they plan to carry out their proposed endeavor or its potential prospective impact, the focus of the first prong is on the proposed endeavor itself and not the petitioner. *See id.* at 889.

The Petitioner submitted an advisory opinion from a professor at the [redacted] who generally discusses the Petitioner's qualifications and experience and her potential to provide legal and business consulting services through the creation of her own consulting company. The professor also discusses the Petitioner's professional experience and accomplishments and notes that her legal experience, combined with her leadership skills, will potentially benefit U.S. companies and clients in a variety of business and commercial transactions.

The Professor, however, focuses on the Petitioner's proposed endeavor to form a consulting company, and focuses on the manner in which she will serve as a chief executive. The professor also discusses the benefits of management and financial consulting and the benefits of such services on the U.S. economy. As discussed above, the Petitioner's initial proposed endeavor to provide legal services and

[3] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

work as a lawyer is under consideration on appeal, and not the newly introduced endeavor submitted in response to the RFE. Although the professor recites the Petitioner's career history and accomplishments, and praises her professional success in Brazil, his letter does not contain sufficient information and explanation of the Petitioner's initial proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's proposed work in the field of law offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance. The letter therefore does not establish the national importance of the Petitioner's specific proposed U.S. work as initially stated. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable"). The letter does not contain sufficient information and explanation of the Petitioner's initial proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's proposed work as a legal consultant/lawyer offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance.

We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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." *See Dhanasar*, 26 I&N Dec. at 890. Although the Petitioner recounts the value and importance of law and legal services and their general impact on business growth, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id*. at 889.

While the Petitioner generally claims that she will provide advice to clients on a variety of legal issues and promote the growth of U.S. jobs, her objectives simply describe the typical occupational duties of a legal consultant rather than establishing that the Petitioner's specific proposed endeavor has national importance.[4] Additionally, the Petitioner does not provide further specific details as to how these objectives would be accomplished. The Petitioner's statements reflect her intention to provide legal consulting services for her clients or employers, but she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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. *See id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her employers or clients to impact her field, the legal sector, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work as a legal professional/lawyer, the record does not

[4] In determining national importance, the analysis focuses on what the petitioner will be doing rather than the specific occupational classification. For instance, although the petitioner in *Matter of Dhanasar* was an engineer by occupation, the decision discusses his specific proposed endeavor "to engage in research and development relating to air and space propulsion systems, as well as to teach aerospace engineering." *See generally* 6 *USCIS Policy Manual* F.5(D)(1), http://www.uscis.gov/policy-manual; *see also Matter of Dhanasar*, 26 I&N Dec. at 891.

show that benefits to the regional or national economy resulting from the Petitioner's legal consulting services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

On appeal, the Petitioner states that her proposed consulting company will create jobs and promote financial literacy which will reduce financial inequality and promote economic development and growth in economically depressed areas. As previously noted, however, the Petitioner's plans to direct a newly established company and provide financial consulting services, submitted for the first time in response to the RFE, constitute a material change to the proposed endeavor as initially stated, and therefore will not be considered. Even if we were to consider this new proposed endeavor, the evidence is insufficient to show that the potential prospective impact of this endeavor would have the sort of potential to employ U.S. workers or other positive economic effects that would rise to the level of national importance.

Because the Petitioner has not shown that she intends to pursue her initial endeavor and because she has not provided sufficient information and documentation regarding her proposed endeavor, she did not demonstrate that the endeavor has national importance. Therefore, we cannot conclude that she meets the first prong of the *Dhanasar* framework. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the remaining *Dhanasar* prongs. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude 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.