U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30371742

Date: MAR. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing manager and entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

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 provided a business plan and described her proposed endeavor as serving as the founder and chief executive officer of her company, [redacted] located in [redacted] Florida. Her endeavor will "aid the growth of small- and medium-sized businesses (SMBs), micro-businesses, and start-ups, as well as operators in the Tech, Retail, Health, Finance, and Insurance Industries by providing a full range of marketing and marketing consulting services." She explained that the consultancy portfolio will consist of five "strategic axes" to include: communication, public relations, digital marketing, growth marketing, and training and consulting. The Petitioner stated that the company was established in Florida and will expand into Texas and North Carolina within three years.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance.[2] On appeal, the Petitioner reiterates previous statements made in the initial petition and in response to the Director's request for evidence. The Petitioner again summarizes her prior employment experience and qualifications, and she asserts that her past contributions and achievements demonstrate that she has made and continues to make contributions of significant impact. The Petitioner reiterates the general marketing services that will be provided by her company, and the importance of marketing for businesses that contribute to the growth of the U.S. economy.

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. As it relates to the Petitioner's experience and ability claims, those relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Moreover, the Petitioner must establish the national importance of her business rather than the importance of marketing services, small businesses, immigration, and entrepreneurism.[3] Further, "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.* The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed

[2] The Director also found that the Petitioner did not meet the second and third prongs of *Dhanasar*.

[3] The Petitioner's contentions and submissions of industry articles and reports relates to the substantial merit of the proposed endeavor rather than the national importance.

solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. And 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.

Moreover, 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. In *Dhanasar*, we determined 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. We recognize the overall value of providing marketing services and running a company; however, the evidence does not sufficiently demonstrate that the Petitioner's specific undertaking stands to have an impact beyond the organizations and clients she would serve, or that her proposed work would otherwise have broader implications for the marketing industry or initiatives. For example, the record does not establish the Petitioner has plans to introduce novel methodologies or techniques that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulate how she will contribute to research and development of our nation's marketing services. The petitioner stated in her business plan that her company's competitive advantage is rooted in its comprehensive full-service approach to marketing to ensure that all aspects of a client's marketing strategy are considered from traditional advertising, digital marketing, public relations and more. However, she does not explain if this full-service approach is novel or unavailable in the United States to the extent that it would have an impact to the industry. Here, the record does not show through supporting documentation how her specific company that provides marketing services stands to sufficiently extend beyond her prospective clients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Further, the Petitioner has not sufficiently 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. The Petitioner's business plan makes various financial projections but has not offered evidence to corroborate the contents. The business plan makes various projections that the company will purportedly achieve in five years, such as increasing the sales forecast from $224,640 in year one to $821,070 by year five. In addition, the business plan indicated the company will hire 3 employees in year one that will increase to 11 employees by year five. Further, the Petitioner stated that the company will expand to Texas and North Carolina by year three. However, the plan does not provide sufficient detail of the basis for these projections, or adequately explain how these sales and staffing targets will be realized. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The business plan also utilizes the Regional Input-Output Modeling System (RIMS II) for the positions of "Advertising, Public Relations, and Related Services" in Florida that projects that in the next five years the Petitioner's company will sustain an additional 25 jobs. However, the Petitioner does not

elaborate on the 25 jobs a RIMS II calculation anticipates her company will create, such as the type of jobs those would be, the breakdown of part-time versus full-time positions, and where they would be created. Without more detailed, credible evidence of the types of jobs that would be created and where the jobs would be located, the record does not establish that employing the positions listed in the business plan and creating 25 unspecified jobs at unspecified locations, would show the type of substantial positive economic effects, and whether the effects would be particularly in an economically depressed area, contemplated by the first *Dhanasar* prong. *See id.* at 889-90. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

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 acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established the national importance of her proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.