U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 30542620

Date: MAR. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal consultant, 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 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. *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 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 continue using my expertise and knowledge gained through my ten (10) years of experience, to serve as a legal consultant at my company." The Petitioner elaborated that her company "will offer expert legal and business consulting services to U.S. companies that either already have an established presence in the Brazilian market or wish to do so in the future." The record contains a business plan, which indicates that the Petitioner will work as the general manager and lead consultant of the company, which will be "based in [redacted] Florida." The business plan also indicates that the company will employ one legal advisor, business consultant, and administrative assistant, respectively, for a total of four workers, including the Petitioner, in the first year of operation, adding two additional legal advisors and business consultants, respectively, for a total of eight workers, including the Petitioner, by the fifth year of operation. The business plan further notes that the company "will hire the services of independent marketing specialist and accountant [sic]," but it will not directly employ those workers.

The Director found that the proposed endeavor has substantial merit. However, the Director observed that the record does not establish that the proposed endeavor will have broader implications beyond the consulting company's prospective clients and customers or that the proposed endeavor will have substantial positive economic effects. Therefore, the Director concluded that the record does not establish the proposed endeavor has national importance, as required by the first *Dhanasar* prong. The Director further concluded that the record does not satisfy the second or third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

On appeal, the Petitioner summarizes generalized information regarding management consulting and data related to trade between the United States and Brazil, and she asserts that transnational business correlates to increased importation and exportation, generally "benefitting the national economy," increasing tax revenue, and potentially creating unspecified jobs. She opines that, if her clients conduct successful business operations in Brazil, that "could inspire others to follow suit." The

Petitioner asserts that "the fortification of STEM as a significant national benefit" is a factor in determining whether her proposed endeavor may have national importance. The Petitioner further states that her "unique legal and business consulting expertise for US companies in the Brazilian market is an innovation." The Petitioner also asserts that, by employing herself as a general manager of her own startup company, her proposed endeavor will address an "urgent need" for general managers among employers in Florida. The Petitioner also references information unrelated to whether the proposed endeavor may have national importance, such as her qualifications and letters of interest from prospective clients, which relate to the second *Dhanasar* prong—whether an individual is well positioned to advance an endeavor. *See id.* for an elaboration of the three prongs.

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 generalized information regarding management consulting and data related to trade between the United States and Brazil, referenced by the Petitioner on appeal, does not inform how the proposed endeavor may have national importance. Again, we focus on the "specific endeavor that the [noncitizen] proposes to undertake" to determine whether the endeavor may have national importance, not on the importance of the industry, field, or profession in which an individual will work. *See id.* at 889. Because the generalized information regarding management consulting and data related to trade between the United States and Brazil, referenced by the Petitioner on appeal, does not discuss the Petitioner, the specific proposed endeavor, and how the endeavor may have national importance, it is immaterial to this part of the *Dhanasar* analysis. *See id.* Relatedly, the Petitioner's references to abstract importation and exportation, tax revenue, and unspecified job creation rely on more generalizations about the results of typical business activity, rather than providing probative information about what the Petitioner plans to accomplish through the endeavor and how it may have national importance.

Next, contrary to the Petitioner's assertions on appeal, whether a petitioner qualifies as a member of the professions with an advanced degree in science, technology, engineering, or mathematics (STEM) does not alter the analysis of whether a proposed endeavor may have national importance. In all national interest waiver cases, the record must establish that a proposed endeavor—STEM-based or otherwise—has both substantial merit and national importance. *See generally* 6 *USCIS Policy Manual* 5(D)(2), https://www.uscis.gov/policy-manual. To assess national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. Moreover, the Petitioner does not establish how her proposed endeavor of owning and operating a legal consulting company involves STEM beyond routine business administration.

Next, the Petitioner's unsubstantiated assertions on appeal that her "unique legal and business consulting expertise for US companies in the Brazilian market is an innovation" is unpersuasive. The

record does not establish how the Petitioner's legal and business consulting services are sufficiently distinguishable from other legal and business consultants' services, to have the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" contemplated by *Dhanasar*. *Id.* at 889-90.

Next, the Petitioner asserts that there is an "urgent need" for general managers among employers in Florida and that, by creating a new company and employing herself as her own company's general manager, she will help meet that need. The record does not establish how the Petitioner's self-employment as her own company's general manager may mitigate a need for general managers among other employers in Florida, urgent or otherwise. Rather, the Petitioner's self-employment as her own company's general manager appears to benefit herself as her own employee (and employer), and it addresses her own company's need—a need that she created by founding the company.

We note again that, although the Petitioner references information unrelated to whether the proposed endeavor may have national importance, such as her qualifications and letters of interest from prospective clients, that information relates to the second *Dhanasar* prong—whether an individual is well positioned to advance an endeavor. *See id.* at 889-90 for an elaboration of the three prongs. We need not further address information unrelated to whether the proposed endeavor may have national importance for the purpose of this analysis.

The Petitioner's proposed endeavor of founding a legal and business consulting company appears to benefit the Petitioner, as the company's owner, and the individuals and entities who may use the company's services as customers and clients. However, the record does not establish how the endeavor may have broader implications within the field of legal practice, business management, commerce, or any other field, with the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances," contemplated by *Dhanasar*. *See id.* The record does not establish how the Petitioner's plan to employ a total of eight workers, including herself, in the job positions noted above, in the [redacted] Florida, area, demonstrates the proposed endeavor may have a "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *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.