U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29549547

Date: MAR. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an anti-corruption and investigations specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. 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. The Director concluded that the record did not demonstrate the Petitioner's eligibility for the requested national interest waiver. 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. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
>
> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
>
> (D) Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;
>
> (E) Evidence of membership in professional associations; or
>
> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

8 C.F.R. § 204.5(k)(3)(ii).[2]

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[3] See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Matter of Chawathe, 25 I&N Dec. at 376.

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[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), https: //www.uscis.gov/policy-manual.

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 eligibility for 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as matter of discretion,[4] 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.

II. ANALYSIS

The Petitioner proposes to work in the United States as an anti-corruption and investigations specialist for a police department.

A. Member of Professions Holding an Advanced Degree

The Director's decision did not indicate whether the Petitioner established her eligibility for the underlying EB-2 immigrant classification. However, in a request for evidence notice, the Director stated that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree. Upon de novo review, the record does not show that the Petitioner is eligible for the underlying classification as an advanced degree professional.

The record includes a diploma indicating the Petitioner was granted the title of lawyer from [redacted] in Colombia in June 2017. Although the Petitioner included a letter from the university stating she attended the university "from FIRST to TENTH SEMESTER of LAW" with the dates of her attendance, the record does not include evidence showing her academic credentials are the foreign equivalent degree above that of a U.S. bachelor's degree. Also, the record does not demonstrate the Petitioner has a U.S. bachelor's degree or a foreign equivalent degree followed by five years of post-baccalaureate experience.

The Petitioner has not established that she has a U.S. degree or a foreign equivalent degree above that of a bachelor's degree, or a U.S. bachelor's degree or a foreign equivalent degree followed by five years of post-baccalaureate experience in her specialty. Therefore, we withdraw the Director's determination that the Petitioner is eligible for the underlying EB-2 classification as a member of the professions possessing an advanced degree.

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

B. Individual of Exceptional Ability

Because the Director determined that the Petitioner established her eligibility as a member of the professions possessing an advanced degree, the Director did not evaluate her claim that she qualifies as an individual of exceptional ability.

The Petitioner claimed that she meets four of the six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii), specifically the criteria for academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A), ten years of experience at 8 C.F.R. § 204.5(k)(3)(ii)(B), license to practice the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(C), and recognition for achievements and significant contributions to the industry at 8 C.F.R. § 204.5(k)(3)(ii)(F). For the reasons provided below, we conclude that the Petitioner does not meet at least three of the regulatory criteria required for classification as an individual of exceptional ability.

> An official academic record showing that the individual has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A).

As discussed above, the Petitioner submitted a copy of her diploma from [redacted] in Colombia granting her the title of lawyer. However, the record does not include an official academic record from the university, as required under the criterion. Therefore, the Petitioner does not meet eligibility under the criterion.

> Evidence in the form of letter(s) from current or former employer(s) showing that the individual has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B).

To meet this criterion, the Petitioner maintains she worked for two employers having obtained more than ten years of experience in her occupation. The record includes a letter from the Attorney General for [redacted] indicating that from January 1, 2012, to April 6, 2021, the Petitioner worked as a criminalistic research assistant, a research technician I, an investigator technician, and a research technician II. Although the letter indicates her job duties relate to her intended occupation, it does not indicate whether her work was full-time, as required under the plain language of the criterion.

The Petitioner also claims meeting the criterion based on her work with [redacted] in Columbia. The record includes recommendation letters from her previous colleagues at [redacted] attesting to her professional knowledge. However, the letters lack sufficient details of her dates of employment and do not indicate whether her position was full-time, as required by the criterion. The Petitioner also submitted certificates from [redacted] which commend her work on specific projects. Such certificates do not meet the plain language of the criterion since they are not letters from [redacted] detailing her dates of employment or whether her work was full-time, as required under the criterion.

Therefore, the record does not demonstrate the Petitioner has at least ten years of full-time experience in the relevant occupation.

> A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

To meet this criterion, the Petitioner maintains she received a license to practice law in Colombia, and she has "certifications from professional organizations and universities for her works as an exceptional [a]nti-[c]orruption and [i]nvestigations [s]pecialist in her field of expertise."

For her license to practice law, the Petitioner submitted her lawyer professional card issued by the Judicial Branch of the Superior Council of the Judiciary for the Republic of Colombia. However, her professional card does not indicate it is a license to practice her occupation as an anti-corruption and investigations specialist. Also, the record does not include evidence explaining the significance of the professional card, nor does it indicate that it serves as a license or certification for her occupation as an anti-corruption and investigations specialist.

The Petitioner also submitted certificates to show she completed training courses relating to her work as a detective and to extend her studies in the field of anti-corruption and investigations. Although the certificates show the Petitioner completed coursework relating to work as an anti-corruption and investigations specialist, it does not show that the Petitioner has a license to practice her profession or that she received certification for her occupation as an anti-corruption and investigations specialist.

Since the record does not demonstrate that the Petitioner has a license to practice the profession or certification for her occupation, she has not established that she meets this criterion.

> Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

To meet this criterion, the Petitioner submitted letters from her former colleagues and news articles maintaining they show "the recognition she has received from professionals and experts within her field of expertise who recognize [her] contributions to the field . . . ." The letters are from prosecutors and investigators who previously worked with the Petitioner in Colombia. The letters attest to her being a committed and knowledgeable investigator whose work supported successful investigations and aided in criminal convictions. They also detail the policing and investigative work the Petitioner provided for specific criminal cases. Accompanying the letters are news articles describing the criminal convictions for the specific criminal cases.

While the record shows the Petitioner is a professional and skilled criminal investigator, and her former colleagues value the investigative work she provided to them for criminal investigations, it does not demonstrate that the Petitioner has been recognized for achievements and significant contributions to her industry or field, as required under the criterion. Therefore, the Petitioner has not demonstrated she meets this criterion.

Since the Petitioner has not established that she meets at least three of the initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F), we need not conduct a final merits analysis to determine whether the evidence in its totality shows that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. §

204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

C. Substantial Merit and National Importance

As discussed above, the Petitioner has not established her eligibility for the underlying EB-2 classification, and she is therefore not eligible for a waiver of that classification's job offer requirement. However, we will discuss whether the Petitioner demonstrated a waiver of the labor certification would be in the national interest, the basis for the Director's decision.

The Director found that the Petitioner failed to demonstrate the proposed endeavor has substantial merit and is of national importance, as required by the first Dhanasar prong. The Director further found that the Petitioner did not establish that she is well positioned to advance the proposed endeavor under *Dhanasar's* second prong, and 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 under *Dhanasar's* third prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[5]

The first prong of the Dhanasar framework, substantial merit and national importance, focuses on the specific endeavor that the individual 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. Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to work in the United States as an anti-corruption and investigations specialist for a police department. The Petitioner states she would "assist and enhance the crime investigation and evidence gathering efforts of U.S. investigation agencies" with a goal to work "to identify and prosecute criminal activities and corruption" and to contribute "to building a safer environment for American citizens." Evidence in the record establishes that the Petitioner's proposed endeavor has substantial merit, and we withdraw the Director's determination to the contrary.

With respect to the national importance of her proposed endeavor, the Petitioner argues on appeal that the Director did not provide "a fair and thorough review" of the evidence in the record, including industry reports and media articles; her business plan; an opinion letter; and U.S. government initiatives. She argues that her business plan details her "employment activities and the direct benefits of these activities" taking issue with the Director's conclusion that she "did not 'provide specific insight as to what she intends to do as an [a]nti-[c]orruption and [i]nvestigations [s]pecialist in the criminal investigations field.'" (emphasis omitted). She argues that her anti-corruption and investigation techniques would "benefit the general public and create a safer environment for Americans." Upon de novo review, we find the Petitioner did not demonstrate by a preponderance of the evidence that her endeavor satisfies the national importance element of Dhanasar's first prong, as discussed below.

[5] While we may not discuss every document submitted, we have reviewed and considered each one.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

The Petitioner's business plan maintains that her work "will create numerous benefits to the [United States], including promoting good governance, economic growth, the rule of law, and social justice." The business plan explains that her work would benefit the U.S. economy since a reduction in crime would increase the value of local properties and attract investment in cities. The social welfare benefits described in the plan include increased safety and security; promoting cooperation between police, government agencies, judicial systems, and private investigators; solving international crime schemes relating to human and drug trafficking; transferring her knowledge to others in the workforce; and training and development of crisis management prevention and security policies for employees.

To demonstrate her proposed endeavor has the potential to realize the asserted economic and social welfare benefits, the business plain details her academic credentials, her professional training, her previous employment, and her professional achievements. Based on her professional experience and training, she contends the she would "be able to help combat and prevent crime at both the local and national levels. . . . By working to combat and prevent crime, the Petitioner will contribute to a more just and equitable society, one in which everyone can live and work without fear. This, in turn, will have a positive impact on the national level, as it will promote a more stable and cohesive society overall." The business plan states, "Her expertise in investigating and prosecuting complex corruption cases involving public officials and private individuals will significantly benefit U.S. law enforcement agencies. [The Petitioner's] extensive knowledge of Colombian law and her experience working within the Colombian legal system will be particularly valuable to U.S. law enforcement agencies seeking to investigate and prosecute cross-border corruption cases."

However, the Petitioner's reliance on her academic credentials, professional experience, and achievements to establish the national importance of her proposed endeavor is misplaced. Her academic credentials, professional experience, and achievements relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under 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. See id. at 889.

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. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of criminal investigations, as contemplated by 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. The

evidence does not suggest that the Petitioner's work as an anti-corruption and investigations specialist for a police department would impact the criminal investigations field more broadly.

To show the national importance of her proposed endeavor, the business plan also provides an extensive market and industry analysis of the criminal investigations field, including the importance of the police investigation industry to law enforcement preventing and solving crimes; the job duties of investigators; the shortage of skilled investigators; the benefits of private investigators to businesses; company use of private investigators for corporate corruption and insurance fraud; impacts of drug and human trafficking, laws related to public corruption; and benefits of anti-corruption inspectors in the United States. The Petitioner also argues her proposed endeavor's national importance based on it being aligned with U.S. government initiatives related to U.S. national security. Emphasizing U.S. government policies related to anti-corruption, the Petitioner maintains she "will rely on her experience and expertise in the field to leverage her skills to contribute to the development and implementation of strategies that will modernize and coordinate the U.S. government's efforts to fight corruption, curb illicit finances, and assign responsibility to corrupt actors."

However, the Petitioner's general claims that her anti-corruption and investigations specialist work for a police department will benefit the economy and the social welfare of the United States has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide economic and social welfare benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as an anti-corruption and investigations specialist offers innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic and social welfare benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed work as an anti-corruption and investigations specialist for a police department and the claimed economic and social welfare benefits to the United States.

The Petitioner further claims on appeal that the national importance of her proposed endeavor is evidenced in industry reports and articles. She argues that the reports and articles show that her work would have "implications beyond her local community," and they document "the potential significance of U.S. advances in [the Petitioner's] proposed implementation of [a]nti-[c]orruption strategies". The reports and articles relate to public, private, and community policing; combating public corruption; DNA evidence; fingerprint processing; ballistics; encryption; skilled labor shortage; forced labor; importance of data analysis on combating crime; ensuring integrity in U.S. infrastructure spending; insurance fraud; human rights practices; human and drug trafficking; effects of corruption on migration; counter-terrorism; fighting corruption; guide for international cooperation to recover U.S. assets; repeal of Dodd-Frank Act; U.S. government anti-corruption initiatives; expected growth of investigation services; and the shortage of skilled law enforcement professionals.

We recognize the importance of the anti-corruption initiatives, the criminal investigations field, and related careers; however, merely working in the criminal investigations field as an anti-corruption and investigative specialist for a police department is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we 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 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. The industry reports and articles submitted do not discuss the broader implications of the Petitioner's proposed endeavor to her field, or the claimed economic and social welfare impacts specifically attributable to the Petitioner's proposed endeavor.

The Petitioner further argues the national importance of her proposed endeavor is evidenced with an opinion from a law professor with [redacted] in Massachusetts. The opinion includes an analysis of the national importance of the Petitioner's proposed endeavor stating, "[The Petitioner] will work in the United States in an area of substantial merit and national importance." The opinion focuses on the Petitioner's "extensive knowledge" with criminal investigations the United States which would benefit "the general public and create a safer environment for Americans." The opinion reiterates the potential benefits set out in the Petitioner's business plan, specifically "promoting transparency, accountability, and integrity in public institutions; creating a level playing field for businesses; promoting the rule of law and protecting individual rights and freedoms; and ensuring equal access to essential services." In support of the Petitioner's proposed endeavor having national importance, the opinion explains the importance of anti-corruption and investigations specialists to U.S. government agencies, such as the U.S. Department of Justice and the U.S. Securities and Exchange Commission. It also maintains that her proposed endeavor has "significant potential to employ U.S. workers and has other substantial positive economic effects" based on the expected demand for skilled professionals in the field. The opinion maintains her proposed endeavor "will broadly enhance societal welfare" based on anti-corruption and investigations specialists contributing "to reducing inequality and promoting equal opportunities."

However, the opinion's focus on the need for anti-corruption and investigations specialists and how the Petitioner's professional experience makes her well positioned to help the industry with her professional skills does not demonstrate that the Petitioner's specific endeavor may have a prospective impact in her field. The opinion does not focus on the Petitioner's specific endeavor and it having a potential prospective impact on the U.S. economy or social welfare, or in the field of her proposed endeavor. Stating that her background in anti-corruption and criminal investigations would support an important industry and alleviate a shortage of workers in the criminal investigations industry is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that her proposed endeavor extends beyond her employer to impact anti-corruption initiatives, the criminal investigations field, or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The record does not suggest, for example, that the Petitioner's anti-corruption and investigations duties would meet the current demand for criminal investigators, address the national criminal investigations professional job shortage, or otherwise operate on a scale rising to the level of national importance contemplated by Dhanasar. The record does not support that the Petitioner's proposed work as an anti-corruption and investigations specialists with a police department stands to have wider implications in the field of criminal investigations. While we agree that anti-corruption initiatives and the field of criminal

investigations have significant merit, the evidence and arguments provided do not support a finding that the Petitioner's specific proposed endeavor has national importance.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs. See INS v. Bagamasbad, 429 U.S. at 25 ("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. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Also, the Petitioner has not met the requisite first prong of the Dhanasar analytical framework. Therefore, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.