U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30211927

Date: MAR. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as an advanced degree professional. 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. 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 qualifies as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by at least five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either an advanced degree professional or an individual of exceptional ability, the petitioner 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 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 a 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.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the EB-2 classification as an advanced degree professional, based upon obtaining the foreign equivalent of a bachelor's degree in industrial engineering followed by at least five years of progressive experience in the specialty. Upon de novo review, we agree that the record demonstrates that the Petitioner obtained the foreign equivalent of a bachelor's degree in industrial engineering. However, we note that the work experience letter submitted by the Petitioner states only the Petitioner's job title, salary, and start date of employment. It does not contain a specific description of the Petitioner's job duties, as required by 8 C.F.R. § 204.5(g)(1).[2] The Petitioner would need to address this deficiency in any future proceedings where attainment of an advanced degree is required to establish eligibility. Regarding the Petitioner's request for a national interest waiver, the Director concluded that the Petitioner is well-positioned to advance the proposed endeavor. However, the Director determined that the Petitioner did not establish the national importance of the proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States.[3]

The Petitioner proposes to establish a consulting company in [redacted] Georgia to provide systems, applications, and products in data processing (SAP) software advisory services to client companies. The Petitioner describes SAP software as an enterprise resource planning (ERP) system that "creates a centralized system for businesses that enables every department to access and share common data to create a better work environment" and that allows businesses to automate tasks, streamline processes, and improve overall efficiency and productivity. The Petitioner states that the company currently offers "SAP consulting services, SAP development and implementation, support and maintenance of SAP, user training, as well as SAP license sales."

---

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

[2] While there is other evidence in the record that helps demonstrate the nature of the Petitioner's job duties with this employer, such as the Petitioner's personal statement and letters of recommendation from colleagues, the regulation at 8 C.F.R. § 204.5(g)(1) requires that, to establish the requisite years of experience, the Petitioner submit letters from current or former employers that contain a specific description of the duties performed.

[3] The Director stated in a request for evidence (RFE) that the Petitioner established the substantial merit of the proposed endeavor, but this finding is not in the decision.

In concluding that the Petitioner did not demonstrate the national importance of the proposed endeavor, the Director found that the potential payroll and income taxes that the company will pay, as projected by the business plan, would not have a significant impact on the nation's tax revenue because "it would account for less than 1% of the $4.9 trillion that the United States receives in taxes." The Director also found that the business plan does not demonstrate that the proposed endeavor offers benefits which extend beyond the community to impact the consulting industry more broadly. Additionally, the Director concluded that the various articles submitted do not demonstrate the importance of the Petitioner's specific endeavor and the impacts that it may have on a national or regional level. As to the Petitioner's assertion that national interest waiver petitions have been granted for similar endeavors, the Director noted that the examples cited by the Petitioner are non-precedent decisions of the AAO and therefore not binding authority. The Director also concluded that the Petitioner did not submit documentary evidence to support her statements and stated that "[s]imply going on record without supporting documentary evidence is not sufficient" to meet the burden of proof, citing to *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972).

On appeal, the Petitioner claims that the Director did not consider the "ample research, credentials, and objective, independent evidence" submitted, instead dismissing it as "general assertions." The Petitioner contends that the Director erred by emphasizing the potential tax revenue of the company and did not sufficiently consider the other potential impacts of the endeavor. The Petitioner also asserts that the Director erred by invoking *Matter of Treasure Craft of California*. The Petitioner claims that the evidence, if considered under the preponderance of the evidence standard, does demonstrate the national importance of the proposed endeavor, based upon the importance of the information technology (IT) industry, ERP consulting, and the positive impact that ERP and SAP consulting has on small businesses. The Petitioner asserts also that these claims are supported by the fact that the Petitioner's proposed endeavor is the subject of national initiatives.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Regarding the Petitioner's claim that the Director erred by emphasizing the potential tax revenue projected in the business plan, the Petitioner contends that evaluating an endeavor's potential economic impact should include more than just its potential tax revenue, stating that, "[a]nalyzing economic impact by individual taxpayer contribution alone would mean that no company started by a foreign national" would be able to meet this standard. The Petitioner also contends that national importance encompasses more than just economic impacts, and that the proposed endeavor here also has benefits to the national security and the general welfare of the United States.

We agree that, as stated in *Matter of Dhanasar*, evidence of significant economic impacts is one of the ways in which national importance may be established, but it is not required. *Id.* at 889. An endeavor's potential impact may rise to the level of national importance, for example, based upon its implications within a particular field. *Id.* Moreover, economic impact may be demonstrated in ways

other than potential federal tax revenue, such as through significant potential to employ U.S. workers, particularly in an economically depressed area. *Id.* at 890. Therefore, we disagree with the Director's decision inasmuch as it may be read to conclude that the sole reason that the business plan does not establish sufficient economic impact is because the potential tax revenue "would account for less than 1% of the $4.9 trillion that the United States receives in taxes."

Nevertheless, upon de novo review, we agree with the Director that the business plan does not demonstrate the national importance of the proposed endeavor. The Petitioner's business plan includes a description of the company's services, its current and intended personnel, its marketing strategy, and financial projections. Although the business plan states that the endeavor will "result in overall economic growth," "contribute to creating a qualified workforce" in the United States, and support energy companies and nonprofits, the support for these assertions is based upon the stated benefits of SAP or ERP consulting services in general and the growing demand for these services. But 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." *Matter of Dhanasar*, 26 I&N Dec. at 889. The business plan does not explain how the Petitioner's particular SAP software consulting services have the potential to result in the type of broad impact that would be commensurate with national importance.

As to the financial projections in the business plan, including the potential payroll and income taxes, we note that the plan does not appear to provide any basis or support for the stated projections. Instead, the plan simply states, for example, that the company "will have stable growth" and "will have a growth of 40%" from year 1 to 2, followed by 34% growth, 26% growth, and 22% in each of the following years. While we do not agree with the Director's singular focus on tax revenue as the measure of potential economic impact, we nevertheless conclude that, without an explanation as to the basis for these projections, the business plan does not provide sufficiently credible projections to assess the potential economic impacts of the endeavor.

Similarly, although the Petitioner claims that the Director improperly dismissed the "ample research" and the "objective, independent evidence" in the record, we agree with the Director that this evidence primarily relates to the industry or field, rather than the proposed endeavor. The research submitted includes articles about the importance of small businesses, the benefits of SAP software, the importance of small businesses to U.S. competitiveness with China, and fact sheets about the Biden-Harris administration's national initiatives to support small businesses and improve cybersecurity. While the evidence provides relevant background information on these topics and establishes the importance of the Petitioner's field, these articles do not establish that the Petitioner's specific proposed endeavor—operating an SAP consulting firm—is nationally important.

Next, we acknowledge that *Matter of Treasure Craft of California* requires that a petitioner's statements "be given due consideration" and further that it discusses the agency rejecting such statements when they are contradicted by other evidence in the record. *Matter of Treasure Craft of California*, 14 I&N Dec. at 194. We have considered the Petitioner's personal statement, including the assertion that the Petitioner's company will "focus on providing services to small and medium-sized businesses," "help them improve their business operations," help "the United States to maintain the world leadership over China," and "help the United States . . . maintain its position as a leader in

digital assets." However, the Petitioner's statement provides little detail as to how her endeavor has the potential to operate on such a scale that would rise to the level of national importance. Any professional or business service has the potential to positively impact its clients and community, and thus the economy and social welfare in turn; however, the Petitioner has not offered a sufficiently direct connection between her proposed endeavor and any demonstrable economic or social welfare effects.

Finally, we are unpersuaded by the prior non-precedent decisions that the Petitioner cites to on appeal. First, as the Petitioner notes, these decisions were not published as precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Moreover, two of the three decisions that the Petitioner references predate our precedent decision in *Matter of Dhanasar*, and therefore analyze the record and make findings relying upon a different analytical framework than that which is controlling here. Only one of the decisions that the Petitioner references uses the *Dhanasar* framework. In that case, we concluded that the petitioner, a metallurgical engineer, established the national importance of the proposed endeavor because the endeavor had the potential to improve mining processes, advance metallurgical research, and ameliorate environmental impacts in mining.[4] The same is not true here. Although the Petitioner discusses the potential benefits of increased adoption of SAP and ERP software for small businesses in the United States, the Petitioner has not established that her SAP advisory services differ from those already available on the market, offer improvements or advancements that are replicable throughout the field, or otherwise would stand to broadly impact small businesses, the SAP and IT consulting industry, or the U.S. economy beyond those clients directly served.

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 third prong of the *Dhanasar* framework 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 met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] *Matter of F-E-*, ID# 46885 (AAO Mar. 20, 2017).