U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37338834

Date: MAR. 20, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an administrative and human resources manager, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 the Petitioner had not established that she is eligible for the underlying immigrant classification as an individual of exceptional ability. Furthermore, the Director determined that the Petitioner had not shown 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 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, U.S. Citizenship and Immigration Services (USCIS) then conducts a final merits determination to decide whether the evidence in its totality shows that they are recognized as having

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

the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that 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 the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[2] 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.

Id.

II. ANALYSIS

The Petitioner has education and experience in human resources, administrative management, and accounting. She proposes to establish and serve as the Chief Executive Officer (CEO) of a consulting firm, [redacted], in [redacted] Florida, which will "be dedicated to providing exceptional management-consulting services with a strong emphasis on critical areas such as human resources, finance, and accounting." She intends to focus on serving "two key segments of clients: small and medium-sized enterprises (SMEs) needing assistance with administrative, financial, and commercial restructuring and educational institutions seeking expert guidance to enhance their operational efficiency and overall performance."

The Director determined that the Petitioner met at least three of the six criteria to establish exceptional ability. Specifically, the Director indicated the Petitioner satisfied the following criteria: official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A), a license to practice the profession at 8 C.F.R. § 204.5(k)(3)(ii)(C), and membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E). Because the Petitioner fulfilled at least three criteria, the Director did not reach whether the Petitioner met any other criteria. In a final merits determination, the Director concluded that the Petitioner did not possess a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Additionally, the Director determined that the Petitioner had not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, the Director concluded that the Petitioner had not shown the national importance of her proposed endeavor, that she is well-positioned to advance the proposed endeavor, 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.

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

Upon de novo review, we agree with the Director that the Petitioner has not established the national importance of her proposed endeavor. Because this is dispositive of the petition, we need not reach, and therefore reserve, whether the Petitioner has established that she is an individual of exceptional ability and has otherwise shown that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). In her appeal brief, the Petitioner correctly notes that the Director improperly referenced a pilot in the denial, which is not the Petitioner's profession. She also asserts that the Director mischaracterized her proposed endeavor by stating generally that she intends to "work as a Chief Executive Officer" without indicating assessment of the full scope of her proposal. We acknowledge the Petitioner's arguments, but any error by the Director was harmless, as the record shows the Director reviewed the evidence and reached the correct conclusion about the Petitioner's eligibility. We have reviewed the Petitioner's arguments and all of the evidence in our de novo review.

Matter of Dhanasar's first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of 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. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Director determined the Petitioner established the substantial merit, but not the national importance, of her proposed endeavor.

As to national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See id.* The Petitioner submits articles relating to small businesses and why they fail, how to determine when a company needs restructuring, general information on management consultants and what they do, and occupational information on business and management analysts. However, the matter here is not whether these topics are nationally important. Instead, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of serving as the CEO of a management consultancy firm in [redacted] Florida to advise small to medium businesses and educational institutions on human resources and financial issues.

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. On appeal, the Petitioner argues that her consultancy has the potential to broadly impact the U.S. economy by enhancing operational efficiency, optimizing resource management, and improving financial performance for businesses in the United States. She states that her focus on supporting small and medium-sized businesses, which often fail, will contribute to overall economic growth and stability. Further, she states that her services to educational institutions and the training she will provide to employees will help prepare the future workforce. Additionally, she argues that she can support employer-employee relationships and promote conflict resolution, and that her efforts will align with state and federal priorities.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. 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. Here, the Petitioner did not demonstrate how her business would largely influence the field and rise to the level of national importance. The record does not show through supporting documentation how her endeavor sufficiently extends beyond her prospective clients or employees to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Although she provided a business plan for her proposed company, the Petitioner did not present sufficient supporting evidence to corroborate the assertions and figures. She did not demonstrate how her business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects. Although the business plan predicts total revenue of $340,000 in year one and rising to $1,235,000 in year five, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the business plan claims it will create four jobs in year one and increase to 17 in year five, and will also indirectly create other jobs, the Petitioner did not demonstrate the relevance of these numbers and show that such future staffing levels would provide substantial economic benefits to the [redacted] Florida region or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally.

Furthermore, although the Petitioner submitted letters of recommendation focusing on the Petitioner's prior professional accomplishments, the letters do not show the broader potential impact of the Petitioner's work rather than limited to her past colleagues and employers. Moreover, the letters cover the Petitioner's prior work and accomplishments and relate more to the second prong rather than the first prong of the *Dhanasar* framework. *Id.* at 890. Although she states on appeal that she has received "significant interest from potential clients and numerous letters of intent to hire her services," she does not submit additional evidence on appeal to support that claim or otherwise show a potential for broad impact on the field or economy.

For these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance. The record does not show that benefits to the U.S. regional or national economy resulting from her specific services or business would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner has not met her burden of establishing the national importance of her proposed endeavor. She is therefore ineligible for a national interest waiver and we need not reach, and hereby reserve, whether she has met the other eligibility requirements.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not demonstrated that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.