U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30354435

Date: MAR. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the marketing industry, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 that the record did not establish 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. 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 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 for the underlying EB-2 classification, 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, 889 (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:

- 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 underlying EB-2 classification as an advanced degree professional.[2] Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

The first *Dhanasar* prong, 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the proposed endeavor has substantial merit as the endeavor falls within the range of areas we concluded could demonstrate an endeavor of substantial merit: business and entrepreneurialism. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not show it has national importance.

The Director concluded that the evidence did not demonstrate the Petitioner's proposed endeavor has national importance because there was no significant potential to employ U.S. workers or generate other substantial positive economic effects, particularly in an economically depressed area. Moreover, the Director determined that Petitioner's proposed marketing business would not offer benefits that would impact her industry more broadly.

The Petitioner generally asserts that the Director did not apply the correct burden of proof and failed to properly consider the evidence on record establishing both her vast experience in the field well as the impact of her proposed business endeavor. Upon de novo review of the record, we see no error in the Director's evaluation of the evidence as it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

The record reflects that the Petitioner plans to develop and manage a marketing consulting agency to provide small and medium-sized companies a variety of marketing services. The Petitioner asserts that this endeavor is of national importance because she will "generate jobs for U.S. workers, as well

[1] *See also 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 to be discretionary in nature).

[2] The Petitioner's brief states the "[s]ervice does not agree that the Appellant qualifies for the requested classification as a member of the professions holding an advanced degree." The Director did, however, conclude that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We accept the Director's determination.

as significant and profitable opportunities for the national economy." She claims her proposed endeavor will "contribute to access to innovation, new business practices, and economic prosperity, [and] generate American jobs, increase national and international integration and productivity, and enhance revenues for the U.S. economy at large." In support, the Petitioner provided a definitive statement, a five-year business plan, recommendation letters from prior customers attesting to her success in marketing initiatives and business development, evidence of past marketing projects, and industry reports and articles detailing the economic importance of immigrants, entrepreneurs, small businesses, and the marketing industry.[3]

On appeal, the Petitioner continues to rely on industry reports and articles, as well as her experience in marketing, without establishing how her specific endeavor will have "broader implications." When considering the national importance of a proposed endeavor, the pertinent 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. Accordingly, the Petitioner's reliance on background information and statistics concerning entrepreneurs, business development, and the marketing field generally are not persuasive. In addition, while we recognize that the Petitioner has successfully implemented marketing solutions for her clients in the past and has been commended by her former clients for being "highly capable and [a] very responsible professional demonstrated to be important to the advertising industry," the record does not establish the Petitioner's impact to the field beyond her immediate clients. Moreover, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor.

Turning to the specific endeavor, the Petitioner's definitive statement and business plan indicate that she will provide various marketing services, including brand strategy, digital marketing analysis, strategic planning, full analysis and industry research, and social media management. In response to the Director's request for evidence, the Petitioner asserted that this endeavor "presents national importance to the U.S., because of the ripple effects it generates upon commercial activities, the business industry, foreign direct investments, and ultimately the U.S. economy." The business plan claims that, over the initial five years of operations, the company will have a positive impact to the U.S. economy based on its projected total revenue of $4,825,500 and the creation of eighty-one jobs (comprised of 46 full-time positions, 19 part-time positions, and 16 contract positions).[4] This projected revenue will also result in $363,500 of income taxes paid in that same period. Notably, the business plan provides no explanation for the basis of these projections and does not elaborate on how the proposed employment numbers will impact the area of intended operations.[5]

[3] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

[4] Although not addressed by the Petitioner, we acknowledge that the Director's decision mistakenly states that the Petitioner's business plan reflected an intent to hire 24 workers within the first five years of operations.

[5] While not a basis for our decision, we note that the record shows the Petitioner's business has been in operation for more than two years prior to the filing of this petition; however, the actual earnings noted in the 2020 tax returns are less than one fifth the amount projected in the business plan. Moreover, the record does not include evidence of the hiring of employees consistent with the stated projections. While a petitioner is not required to show that a proposed endeavor is more likely than not to ultimately succeed, the Petitioner may want to address this in any future filings.

Yet, even if the endeavor's revenue and job creation projections were more than conjecture, they do not establish that the endeavor would operate on a scale rising to the level of national importance. In *Dhanasar*, we explained 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 be considered to have national importance." *Dhanasar*, 26 I&N Dec. at 890. According to the business plan, beyond her initial operations in [redacted] FL, the Petitioner indicates that the business will open five additional branch offices between the second and fifth years of operation, including offices in South Carolina, North Carolina, Virginia, and Kentucky. However, the Petitioner has not established how her operations will result in "substantial positive economic effects" for the proposed areas. *Id.* For instance, the business plan does not provide salaries for all 81 claimed jobs, nor does it elaborate on how the Petitioner's proposed employees will be divided among these locations. We are therefore unable to ascertain what, if any, impact her operations would have on the local economy. Moreover, the Petitioner does not offer an evidentiary basis to conclude that the "ripple effects" of her proposed endeavor will affect the U.S. economy at large. While any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity of her proposed endeavor would rise to the level of national importance.

Likewise, the Petitioner's intention to base her branch offices in Small Business Administration HUBZones does not establish that her endeavor is in the national interest, despite her contention that the HUBZone program is "linked to a National Initiative." As the Petitioner does not have physical locations for her proposed branch offices, the Petitioner has not offered sufficient evidence that her business will in fact be in a HUBZone. Further, the Petitioner did not indicate that her endeavor would participate in the HUBZone program or that it would be eligible to do so.[6] More importantly, however, the record does not adequately establish that increased employment in these designated underutilized business zones would have positive economic effects commensurate with national importance. So, the fact that the Petitioner's proposed endeavor may be in a HUBZone does not establish that the Petitioner's endeavor is of national importance.

The Petitioner also asserts that the evidence of her work shows that she has already made "vast contributions in her field" and "will create value for U.S. organizations" through her endeavor by providing advice to optimize their business functions. We have reviewed the evidence of the Petitioner's past projects, including her contribution to the [redacted] project; however, these contributions do not rise to the level of national importance. In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities like the offerings outlined in the business plan that do not extend beyond the Petitioner's clients, would not have broader implications in the field. *Dhanasar* at 889. Similarly, while the Petitioner helped incorporate the concept of archetype marketing for her small business clients, she acknowledged that this methodology has been used for several years in the industry by larger corporations and, thus, we cannot conclude that such work has impacted the field more broadly.

[6] There are several required qualifications to participate in the program, including that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. Here, the record does not establish that the Petitioner's business would qualify for the program.

Finally, we reviewed the expert opinion letter from Dr. V-L- and conclude that it provides little additional explanation to establish the national importance of the Petitioner's proposed endeavor. Dr. V-L- does not discuss the Petitioner's specific proposed endeavor or her business plan, and instead focuses primarily on the importance of the marketing industry. For example, the expert opines that, "[w]ithout effective Marketing management, trading across Latin America, and in this case, Brazil, would be substantially reduced," yet Dr. V-L- offers no explanation as to how the Petitioner's specific endeavor would improve trade in Latin America or in the United States. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance with respect to the national importance of the Petitioner's proposed endeavor.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.