U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30186571

Date: MAR. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who works in marketing for the financial services industry, seeks classification as a member of the professions holding an advanced degree and 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. 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 in July 2022, concluding that the Petitioner had not established eligibility for the national interest waiver. The Director did not address whether the Petitioner established eligibility for the underlying EB-2 classification. We remanded the matter in February 2023, instructing the Director to determine whether the Petitioner is eligible for classification as a member of the professions holding an advanced degree, and to provide a detailed analysis to explain why the Petitioner's evidence does not establish eligibility for the national interest waiver.

The Director again denied the petition in July 2023, again concluding that the Petitioner had not established eligibility for the national interest waiver. The Director did not make any determination regarding the Petitioner's eligibility for classification as a member of the professions holding an advanced degree. The matter is now before us on appeal under 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 a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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 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. EB-2 CLASSIFICATION

Initially, the Petitioner claimed eligibility as a member of the professions holding an advanced degree. The Director's first decision did not address the Petitioner's eligibility for EB-2 classification. In our remand notice, we acknowledged the Petitioner's claim of eligibility as a member of the professions holding an advanced degree, but also noted that the Petitioner had not established that her claimed master's degree was an academic degree rather than a professional certification. We instructed the Director to "consider whether . . . the Petitioner has obtained the equivalent of an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(3)(i)(A) or has otherwise established eligibility for the underlying visa classification as an advanced degree professional or an individual of exceptional ability."

The Director's second decision does not include any determination regarding the Petitioner's claim to be a member of the professions holding an advanced degree. On appeal, the Petitioner notes this omission, and also claims to qualify as an individual of exceptional ability in the sciences, the arts, or business. The Petitioner does not discuss this new claim in any detail.

The Director erred by not deciding the issue of the Petitioner's eligibility for EB-2 classification. But because the Director identified another ground for denial with which we agree, it would serve no constructive purpose for us to remand the matter for the Director to make a determination on the underlying EB-2 classification. We therefore reserve this issue.[2]

III. NATIONAL INTEREST WAIVER

The only issue in the Director's second decision is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that the Petitioner had established the substantial merit of her proposed endeavor, and that she is well positioned to advance that endeavor, but she had not established the national

[1] *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).

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *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).

importance of the proposed endeavor and had not shown that, on balance, the United States would benefit from waiving the job offer requirement.

In her native Brazil, the Petitioner earned a bachelor's degree in social communications in 1995, and in 2013 she completed a program which, she asserts, resulted in a degree equivalent to a master's degree in business administration. From 1999 to 2006, the Petitioner was a planning manager and account director for a marketing agency where she "planned and executed strategic marketing campaigns for" various clients, mostly in the financial industry. She then worked as a marketing manager, first for a bank from 2006 to 2013, then for a shopping center from 2014 to 2016, and finally for another bank from 2016 to 2017. Since 2018, the Petitioner has spent most of her time in the United States as an F-1 nonimmigrant student. She filed the petition in September 2020.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An 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 889-890.

The Petitioner must establish the national importance of the specific proposed endeavor; it cannot suffice for the Petitioner to establish the overall importance of a particular subject, occupation, or field. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See, generally,* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

In discussing the national importance of the proposed endeavor, the Director described and quoted from several documents in the record and concluded that these materials establish "the proposed endeavor's substantial merit (which is not in question) and not . . . its national importance." The Director also stated: "the petitioner has not shown her proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients or the individuals the beneficiary would serve to impact the industry or field more broadly." The Director acknowledged the evidence about the Petitioner's overall field, but concluded that the Petitioner had not established the national importance of her specific proposed endeavor.

The Petitioner, on appeal, contends that the Director still has not fully considered the Petitioner's assertions regarding the national importance of the proposed endeavor. We will discuss the proposed endeavor here.

The Petitioner offered this description of her proposed endeavor:

> I will provide strategic marketing and data analytics consulting services to companies in the financial services sector to enable them to better provide critical financial services to customers throughout the country and world and to design tailored

> marketing campaigns designed to deliver to consumers financial products they need. . . . I will use my expertise in the financial services sector to help financial institutions of all sizes understand data and consumer behavior and then to design strategic marketing initiatives for companies entering the financial market, upsizing, downsizing, offering new products, and reaching new customers. . . .
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> I will offer comprehensive strategic marketing consulting services with a focus on data analytics to clients in the financial services sector . . . to help them understand big data, interpret consumer behavior, reach new clients, retain existing clients, increase customer engagement, and ultimately succeed in the market following the pandemic.

The Petitioner stated that she "intends to serve the U.S. financial services sector as it leads the U.S. through the economic recovery following the COVID-19 pandemic. Marketing professionals skilled in data analytics are urgently needed by the financial services sector to ensure American consumers and business[es] have access to critical capital and financial services they need." The Petitioner also stated: "Strategic marketing professionals with expertise in data analytics in the financial services sector are uniquely positioned to move beyond traditional marketing solutions . . . to reach American consumers and businesses." These statements address the collective impact of a particular specialty, but they do not show that the work of one individual in that specialty has national importance.

The Petitioner submitted copies of articles and other materials, discussing how the financial services industry relies on data analytics for marketing purposes. These materials do not discuss the Petitioner's proposed endeavor specifically, or indicate how the work of one marketing consultant has national importance in its own right.

In *Matter of Dhanasar*, we acknowledged that petitioner's intention to teach university courses and mentor middle school students, but we concluded that the petitioner had not shown that he "would be engaged in activities that would impact the field of STEM education more broadly." *Id.* at 893. The Petitioner cited this same passage from *Matter of Dhanasar* in the denial notice, as the Petitioner acknowledges on appeal. By the same reasoning, background materials about the overall importance of data analytics in the banking industry do not show the national importance of the Petitioner's proposed endeavor.

The Petitioner asserts that the Director did not consider the Petitioner's plans "to provide . . . very unique big-data-based marketing consulting services to financial and banking organizations," and did not acknowledge the details of the Petitioner's proposed endeavor. But the Petitioner does not explain why her provision of these services to particular clients would have broader implications beyond benefit to those clients.

The Petitioner had previously asserted that "her proposed endeavor . . . has broad implications within the U.S. financial industry [because] her particular expertise . . . is crucial to ensure that these organizations remain competitive in the global market." The proposed endeavor in *Dhanasar* involved "hypersonic propulsion research," and the petitioner in that case established "the strategic importance of U.S. advancement in researching and developing these technologies for use in missiles, satellites,

and aircraft." *Id.* at 892. The nature of that research is such that the work of one researcher can be directly applied broadly to U.S. defense and aerospace programs. In the present case, the Petitioner has not explained how her specific proposed endeavor, which involves customized marketing plans based on specific data sets, would impact financial institutions that were not her customers. We agree with the Director's determination that the background materials, which discuss the Petitioner's overall occupation rather than her endeavor specifically, attest only to the substantial merit of the proposed endeavor, not to its national importance.

The appeal includes a new expert opinion letter from a professor at [redacted] This letter was not part of the record at the time of the denial, and therefore could not have influenced the Director's decision. Furthermore, the letter does not explain how the Petitioner's specific proposed endeavor has national importance. Instead, the letter states that "the importance of ensuring the availability of experts such as [the Petitioner] is clearly national in scope," which refers to the collective importance of workers in the Petitioner's field. For these reasons, the new letter is not material to the appeal.

Likewise, newly submitted "articles . . . about the importance of data management in marketing for the health and growth of banks in the United States" are not material to the appeal because the issue is the importance of the specific proposed endeavor, rather than the overall importance of the type of work that the Petitioner intends to undertake. The Petitioner must establish the national importance of her specific endeavor, rather than that of her occupation as a whole.

The Petitioner has not shown that, or explained how, her provision of marketing services to a limited number of clients has broader implications that rise to the level of national importance.

In light of the above conclusions, the Petitioner has not met her burden of proof to show that her proposed endeavor has national importance as required by the first prong of the *Dhanasar* national interest test. Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.

IV. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.