U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30315574

Date: MAR. 28, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is a marketing administrator who 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. § 1 l 53(b)(2).

The Director of the Nebraska Service Center denied the petition. The Director determined the Petitioner qualifies for EB-2 visa classification as a member of the professions holding an advanced degree but did not establish her eligibility for a national interest waiver of the job offer requirement. 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 visa classification, as either an advanced degree professional or as 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).

If 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, grant a national interest waiver if the petitioner demonstrates that:[1]

- 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. ADVANCED DEGREE PROFESSIONAL

In the decision denying the petition, the Director concluded that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. For the reasons provided below, we withdraw the Director's determination.

The Petitioner submitted the following evidence related to her education and work experience:

- Transcript and course completion certificate for "*Latu Sensu*" specialization-level studies, (MBA in Marketing: Emphasis on Sales) awarded by the [redacted] in December 2013.
- Transcript and diploma for completion of a bachelor's degree in administration from [redacted] in February 2011, following four years of post-secondary study.
- Employment letter confirming the Petitioner worked as a sales supervisor at a [redacted] retail location in Brazil from April 2014 through August 2016.
- Accountant-prepared declaration of income statements stating the Petitioner's annual income (and source of income) for the years 2015 through 2020.
- Evidence related to the ownership and management of the Brazilian entity [redacted] the Petitioner's claimed former employer.

The Director's determination that the Petitioner qualifies as a member of the professions holding an advanced degree appears to be based solely on her academic credentials. However, the submitted evidence is not sufficient to demonstrate the Petitioner has either a foreign equivalent degree above that of a bachelor's degree or a foreign equivalent of a U.S. bachelor's degree followed by five years of progressive experience in the same specialty. *See* 8 C.F.R. § 204.5(k)(2) (defining "advanced degree").

According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE), a *lato sensu* course certificate is not necessarily evidence of completion of a graduate degree program.[2] The database states that *lato sensu* or "wide sense" graduate programs "lead toward a professional certificate, not to graduate degrees; graduate

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

credits may be awarded."[3] The database contrasts this with *stricto sensu* or "strict sense" graduate programs which do lead toward graduate degrees.[4] The Petitioner did not submit an evaluation of her foreign educational credentials and has not established that her *lato sensu* MBA course certificate is the equivalent of an academic or professional degree above that of a bachelor's degree. *See* 8 C.F.R. § 204.5(k)(2).

The information provided by the EDGE database confirms that the Petitioner's four-year degree completed in 2011 is the foreign equivalent of a bachelor's degree. However, the record does not adequately document that she has five years of progressive post-baccalaureate experience in the same specialty. Evidence relating to qualifying experience should be in the form of letters from current or former employers and shall include the name, address and title of the writer, and a specific description of the duties performed by the individual. *See* 8 C.F.R. § 204.5(g)(1). The Petitioner submitted a letter from a former employer, [redacted] confirming that she worked for this company as a sales supervisor for two years and four months, but the letter did not include a description of the duties she performed or indicate whether her employment was full-time or part-time.

The Petitioner indicates in her submitted resume that she was employed as co-founder and business development manager for [redacted] from 2012 until 2020.[5] She submitted annual income declaration statements from an accountant indicating that she earned income from this company as its "managing partner" from 2016 through 2020. While the record demonstrates that the Petitioner was, at times, a shareholder of [redacted] it does not contain sufficient evidence that she was its "managing partner" or sufficiently document her work experience with this company.[6] Neither the company's ownership documents nor the income declarations from the Petitioner's accountant are sufficient to document the length or nature of her work experience with this company.

Therefore, the record does not sufficiently document the Petitioner's five years of progressive post-baccalaureate experience. The Director's determination that she established her eligibility for EB-2 classification as member of the professions holding an advanced degree is withdrawn.

III. NATIONAL INTEREST WAIVER

The remaining issue to be addressed is whether the Petitioner has established her eligibility for a national interest waiver under the *Dhanasar* framework.

In the decision denying the petition, the Director determined that the Petitioner did not sufficiently describe her proposed endeavor. The Director further concluded that she did not demonstrate her proposed endeavor has substantial merit and national importance, that she is well-positioned to

[3] *See* https://www.aacrao.org/edge/country/glossary/brazil for more information.
[4] *Id.*
[5] We note that the Petitioner concurrently filed a Form I-485, Application to Adjust Status or Register Permanent Residence, which required her to provide her employment history for the last five years. The Petitioner stated that her only employment during that period was with [redacted], from April 2014 until August 2016.
[6] The Petitioner submitted an "amendment and consolidation of articles of incorporation" for [redacted] indicating that she sold and transferred all 15,000 of her shares to another shareholder in February 2015, and was "removed from the company." A second amendment to the articles of incorporation, executed in November 2019 (after the Petitioner relocated to the United States), indicates that she reacquired a minority ownership interest in [redacted] with the management and administration of the company entrusted to its majority owner.

advance it, and that, on balance, it would be beneficial to the United States to waive the job offer requirement. On appeal, the Petitioner asserts that the Director's decision contains erroneous conclusions of law and fact and does not reflect consideration of all submitted evidence. She maintains that she meets all three prongs set forth in *Dhanasar* and otherwise established that a discretionary waiver of the job offer requirement would be in the national interest.

For the reasons provided below, we agree with the Director's determination that the Petitioner did not establish the national importance of her proposed endeavor and is therefore ineligible for the requested national interest waiver. While we do not discuss each piece of evidence, we have reviewed and considered each one.

A. The Proposed Endeavor

At the time of filing, the Petitioner stated that she intends to work as a marketing administrator. She submitted a professional plan for a project or business she referred to as [redacted] Much of the plan provides background information regarding digital marketing and advertising methods and the current market for these technologies. In a section titled "Project Purpose," the plan states that the Petitioner, through this project, "will provide marketing campaigns to U.S. companies with the focus on strategies to combat the financial crises caused by the Covid-19 pandemic." The plan further states that [redacted] will identify the specific needs of each business in order to create strategies that best meet such needs." The professional plan included a pro forma profit and loss statement for [redacted] listing its expected annual sales, operating expenses, and net profit over a five-year period.

In response to a request for evidence (RFE), the Petitioner submitted a "personal statement and professional plan" that made no specific reference to the [redacted] identified in the initial plan. She stated:

> My proposed endeavor is to perform as a Marketing Administrator in the United States. My proposed endeavor is to implement my refined set of skills as a Marketing Administrator in order to develop and outline good marketing planning and brand innovation to stimulate exponential growth in organizations located in the United States, being responsible for ensuring the company's expansion and maintaining a satisfactory growth for the business.

She emphasized that her work would include developing marketing campaigns, measuring the effectiveness of marketing and advertising programs, organizing marketing strategies for events, creating brand innovation and product launch strategies, assisting companies in determining potential markets and product demand, and assisting companies with training and developing their marketing and sales teams, among other tasks.

Although the Petitioner submitted evidence that she has received inquiries from U.S. employers interested in discussing job opportunities with her, both professional plans appear to reflect her intent to work with multiple companies in a consulting capacity as a marketing specialist.

B. Substantial Merit and National Importance

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. *Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner did not establish she has a proposed endeavor that satisfies either element of the first prong.

The Petitioner emphasizes that the marketing industry positively impacts U.S. businesses, consumers, and the economy and therefore her proposed work has substantial merit in one or more of the areas mentioned in *Dhanasar*. We find the evidence sufficient to establish the substantial merit of the Petitioner's proposed endeavor. However, as discussed further below, simply working in, or starting a small business in the marketing field falls short of demonstrating the level of national importance required for this visa classification. Our focus in considering national importance is not on the industry itself; instead, we focus on "the specific endeavor that the foreign national proposed to undertake." *Id.*

In *Dhanasar*, we further 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. Finally, we will consider evidence that a proposed endeavor has the potential to broadly enhance societal welfare, and whether it would impact a matter that a government entity has described as having national importance or is the subject of national initiatives.

The Petitioner, through her own statements and through counsel, has made general claims regarding the substantial positive economic effects of her endeavor, many of which simply emphasize the economic implications of successful marketing. For example, the Petitioner stated in response to the RFE that "[m]arketing drives a consumer economy" and explained that "a business that employs successful marketing strategies translates into expansion, job creation, higher tax revenue for governments, and eventually, overall economic growth." The Petitioner further stated that "the marketing industry creates jobs and wealth as businesses seek new and innovative ways to promote themselves and their products." While the revenue and employment generated directly and indirectly by the marketing industry may be important to the U.S. economy, the Petitioner must still demonstrate that the economic effects of her specific proposed endeavor will be "substantial."

The Petitioner maintains that her proposed endeavor will have "ripple effects" that positively impact the economy, noting that the results of her work will be "widely spread" as the companies that utilize her services become "increasingly commercially recognized and profitable." She maintains such local successes will positively impact other businesses and the economy the region and ultimately "lead to the nation attaining overall favorable financial status." The Petitioner also generally claims that her proposed endeavor has "significant potential to employ U.S. workers," but does not elaborate on this

claim other than referencing job creation as a possible ripple effect of improving the financial health of companies that hire her in the future.

The Petitioner's initial professional plan indicated that her [redacted] project would generate revenues of $111,000 in its first year and $169,000 by year five, with net profits increasing from $5,565 to $23,019. The pro forma financial statement does not indicate that the Petitioner anticipates paying salaries or wages to employees or contractors, thus suggesting that she would operate the business as its sole employee.[7] Other than this one-page financial statement, the record does not contain information or evidence regarding any projected U.S. economic impact or job creation attributable to the Petitioner's future work. The Petitioner has not sufficiently explained how her proposed endeavor to work as a marketing administrator has the significant potential to employ U.S. workers, nor has she stated that she will work in an economically depressed area. Even if we determined the initial professional plan's financial projections would likely be realized, the record lacks an explanation of how these forecasted figures would offer substantial economic benefits to the area or to her industry.

The Petitioner cites to overall employment and revenue data for the marketing industry. However, absent information related to the Petitioner's specific endeavor, the record does not show that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. 26 I&N Dec. at 890. The Petitioner does not offer an evidentiary basis for her broad assertion that her proposed work as a marketing administrator or consultant "creates the opportunity to raise the standard of living for the United States and the world" and will be "a key factor in creating a healthy economy."

We have also considered the Petitioner's claim that her proposed endeavor would impact an area that is the subject of national government initiatives. She references President Biden's 2021 Executive Order on Promoting Competition in the American Economy. The Petitioner asserts that "[b]y promoting marketing strategies, developing marketing campaigns, working as a consultant with small, medium and large-sized business, [she] will likewise increase their company outreach, allowing for said companies to gain more visibility and thus create a more competitive market." The Executive Order is directed at federal agencies and departments and does not address the type of private consulting endeavor proposed by the Petitioner. The fact that an individual works in a field that is generally adjacent to the subject of national initiatives is not sufficient to demonstrate the national importance of their work. The Petitioner must still demonstrate the potential prospective impact of her proposed endeavor and how it impacts those national initiatives. Here, the record does not establish that her consulting work will be carried out on a scale that would have a substantial prospective impact on U.S. market competition.

Further, while the Petitioner claims that her proposed endeavor "will benefit U.S. society massively," the record does not provide adequate support for a determination that her specific proposed endeavor has the potential to broadly enhance societal welfare. She explains that her targeted market research and the marketing strategies she implements for her clients will "contribute to a society of informed

[7] According to the pro forma profit and loss statement, compensation would be paid solely to a "Mr. S-" who is not named elsewhere in the record. We assume this is a scrivener's error and the Petitioner herself is the intended sole employee of [redacted]

consumers," entice them "to purchase products and services that enrich their lives or fill a need," and drive product innovation. While the Petitioner claims that successful marketing can match consumers with products and services that improve their quality of life, the record does not establish that the work of one marketing administrator would have the claimed "massive" impacts on societal welfare, or sufficiently broad implications to meet the national importance requirement imposed by *Dhanasar*.

The record also contains statistics citing an increasing demand for qualified marketing professionals in the United States and a shortage of qualified individuals to meet this demand. However, this shortage is likewise insufficient to demonstrate the national importance of the Petitioner's proposed endeavor. A shortage of qualified professionals alone does not render the work of an individual marketing administrator or consultant nationally important under the *Dhanasar* precedent decision. Further, the Petitioner has not shown that her employment as a marketing administrator would have a significant impact on addressing the talent shortage in the field.

The Petitioner attributes the likely success of her proposed endeavor, in part, to her educational background and experience in the marketing and business development field. She also submitted recommendation letters from former colleagues and clients. The Petitioner's skills, knowledge, and prior work in her field, however, relate primarily to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec. at 890. The issue here is whether the specific endeavor that she proposes to undertake in the United States has national importance under *Dhanasar's* first prong. The submitted recommendation letters, which praise the Petitioner's professional skills and qualifications, do not offer insight into the national importance of her proposed endeavor to work as a marketing administrator in the United States. They do not state, for example, that her past work had broad implications within her field that would be carried over to the proposed endeavor and would substantially benefit or advance her field. 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.* While the evidence indicates that the Petitioner has knowledge of and practical experience with a variety of marketing techniques, it does not establish that her proposed endeavor has national implications within the marketing field consistent with *Dhanasar*.

Finally, we acknowledge that the Petitioner submitted an expert opinion letter from a marketing professor who evaluated her eligibility under the three prongs of the *Dhanasar* framework. In addressing *Dhanasar*'s first prong, the author significantly focuses on the economic impact of the marketing industry and the industry's national importance, as well as the Petitioner's prior experience and qualifications to work in the industry. While the professor indicates that the United States would benefit from the Petitioner's expertise and skills as marketing administrator, they do not sufficiently address the Petitioner's specific proposed endeavor, its prospective substantial economic impact, or any broader implications of the Petitioner's work in the field.

We observe that 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 foreign national'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 and probative value with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons provided above, 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 *Dhanasar*. Accordingly, the record does not establish that she merits, as a matter of discretion, the requested national interest waiver. Since this determination is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments relating to her eligibility 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).

IV. REQUIRED INITIAL EVIDENCE

Finally, although not addressed in the Director's final decision, we note the regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA 750B, Statement of Qualifications of Alien, in duplicate." Alternatively, USCIS will accept parts J, K, and L of Form ETA 9089, Application for Permanent Employment Certification. *See generally* 6 *USCIS Policy Manual* F.5(D), https://www.uscis.gov/policy-manual.

The Petitioner did not provide this evidence at the time of filing. In a request for evidence (RFE), the Director advised the Petitioner that she must submit an original labor certification application with the employee-specific portions completed and containing her original signature and the signature of any preparer. The Petitioner's response to the RFE did not include this required initial evidence and for this additional reason, the petition cannot be approved. *See* 8 C.F.R. § 103.2(b)(8)(ii) (providing that USCIS in its discretion may deny a benefit request for lack of initial evidence) and 8 C.F.R. § 103.2(b)(14) (stating that failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request).

V. CONCLUSION

For the reasons discussed, we withdraw the Director's determination that the Petitioner established her eligibility for EB-2 classification as an advanced degree professional. Further, because 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. Finally, the Petitioner did not provide initial evidence required by 8 C.F.R. § 204.5(k)(4)(ii) and the petition cannot be approved for this additional reason.

ORDER: The appeal is dismissed.