U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30970741

Date: MAY 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a general operations manager, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established 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 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner obtained a bachelor's degree in law from the [redacted] in Brazil and has been a member of the Brazilian Bar Association since 2009. She has worked as a lawyer in Brazil since 2010, specializing in social security law and managing her own law firm, [redacted]

The Petitioner's endeavor is to work as the "General and Operations Manager" of her business, [redacted] that will "offer consultancy and assistance in the general personal regularization of immigrants and the development of Latino immigrant businesses in the state of Florida." The Director concluded that the proposed endeavor has substantial merit, but not national importance under the first prong of the *Dhanasar* framework. The Director further determined that the Petitioner is well-positioned to advance her proposed endeavor, but without analyzing the evidence under the second prong. Finally, the Director concluded that the Petitioner did not meet *Dhanasar*'s third prong, as she did not show, on balance, any national interest factors that would outweigh the benefits inherent in the labor certification process.

A. National Importance of the Proposed Endeavor

We adopt and affirm the Director's analysis and decision regarding the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS,* 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS,* 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

In denying the petition, the Director pointed out that the Petitioner's specific endeavor, rather than the field or profession, is the focus when addressing the issue of national importance in the context of a national interest waiver. *See Dhanasar*, 26 I&N Dec. at 889. The Director acknowledged that the Petitioner's endeavor in the field of entrepreneurship has substantial merit; however, the Director determined that the endeavor of operating a consultancy business focused on Latino communities to assist with their immigration status and advise on immigrant business ventures would not result in broad economic implications, such as having significant potential to employ U.S. workers, particularly in an economically depressed area. *Id.* at 890. The Director highlighted the lack of objective evidence to support the staffing projections and figures proposed in the Petitioner's business plan as well as the limited impact of her endeavor. The Director also evaluated the expert opinion letter but found that it only clarified and explained the endeavor instead of demonstrating its national importance with

corroborating details. In sum, the Director concluded that the Petitioner did not establish that her proposed endeavor would more broadly impact the region or nation such that it would rise to the level of having national importance.

On appeal, the Petitioner does not provide any new evidence or arguments to overcome deficiencies noted by the Director or identify any errors on the part of the Director. Instead, the Petitioner refers to the previously submitted evidence, such as her business plan, and broadly claims that she "can contribute significantly to economic growth, job creation, innovation, and the overall efficiency of businesses, labor market, and legal compliance, making them vital components of the country's economic landscape." However, the Petitioner still has not provided corroborating evidence that her company's staffing level and business activities stand to provide substantial economic benefits regionally or to the United States, or that her endeavor has national or even global implications in the field. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Therefore, we conclude the Petitioner has not established that her proposed work is of national importance as contemplated by the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

In the second prong of the *Dhanasar* framework, we shift our focus from the proposed endeavor to the petitioner. *Dhanasar*, 26 I&N Dec. at 890. Here, the Director determined that the Petitioner is well positioned to advance her proposed endeavor without providing analysis of the evidence under *Dhanasar*'s second prong. Upon de novo review, we disagree with the Director. While the Petitioner has credentials and experience as a lawyer in Brazil specializing in social security law and managing her own law firm, we conclude that the record does not demonstrate that she is well-positioned to advance her endeavor as an entrepreneur owning and operating a business focused on regularizing immigration status and assisting business ventures of Latino immigrants in the United States.

The *Dhanasar* decision spelled out several factors which can be considered in determining whether a petitioner is well-positioned to advance their proposed endeavor, including several which are pertinent to entrepreneurial endeavors. *Id.* These include a record of success in similar efforts, any progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals. In this case, the record lacks evidence which supports any of these factors.

The Petitioner submitted her resume and recommendation letters from her former clients and a federal judge. The former clients praise the Petitioner's knowledge and skills in representing them in social security and retirement cases and the federal judge attests to the Petitioner's professionalism and work as a lawyer. The record also shows that the Petitioner published articles about social security and pension law and was cited by the Brazilian media for her knowledge of such legal matters. However, there is no evidence that the Petitioner has previously attempted or succeeded in launching new business ventures for companies or individuals other than her own law firm.

In addition, the record lacks documentation of any progress towards achieving the proposed endeavor, which might include the establishment of the business as a legal entity, registration of the business,

securing any necessary funding, renting or purchasing physical space for the business, and the hiring of employees and contractors. Here, the record does not show that the Petitioner has made any preparations for starting her new business beyond writing a business plan. The Petitioner's business plan itself provides various financial forecasts and staffing projections but lacks independent and corroborating evidence to support these projections.

Further, there is no indication in the record that the Petitioner has successfully gathered interest from potential investors or customers. The Petitioner included letters from three different companies in Florida who similarly express interest in "her business proposal" and state that "she has much to contribute to the American economy." However, the company representatives do not discuss specifics of the business proposal and the Petitioner has not shown other corroborating evidence that these interests will result in sales, contracts, or clients, to demonstrate some record of success.

While "we do not ... require petitioners to demonstrate that their endeavors are more likely than not to ultimately succeed," *Dhanasar* at 890, here the record includes more information about her achievements as a lawyer than about the prospects of her proposed business. Accordingly, we disagree with the Director and conclude that the Petitioner has not established that she meets the second prong of the *Dhanasar* framework.

C. Whether on Balance It Would be in the National Interest to Grant a Waiver

The third prong requires the petitioner to demonstrate 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. However, as the Petitioner has not demonstrated that she meets the first and second prongs of the *Dhanasar* framework, she is not eligible for a national interest waiver as a matter of discretion and further discussion of the balancing factors under the third prong would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is 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).

III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.