U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30559558

Date: MAY 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing and communications manager, seeks classification as a member of the professions holding an advanced degree. *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, 8 U.S.C. § 1153(b)(2)(B)(i). 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, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion[1], grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Petitioner seeks to use her experience as a marketing and communications manager to provide branding and marketing consultancy services to U.S. small businesses, and to teach entrepreneurs how to utilize science-based neuropsychological marketing. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

[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).

The Director concluded that the "the first of the two services of [the Petitioner's] proposed endeavor" has substantial merit. The Director determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, that she is well-positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director's decision contained errors of law and fact. The Petitioner further contends that the Director arbitrarily and capriciously ignored the opinion of the industry expert which emphasized the national importance of the Petitioner's proposed endeavor. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

As previously noted, the first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The record shows that the Petitioner's proposed endeavor is to operate her business, [redacted], which works with small and medium-sized businesses to improve their operations. The Petitioner also seeks to provide educational workshops focused on the use of neuropsychological science to improve marketing techniques.

In denying the petition, the Director concluded that the submitted evidence was insufficient to demonstrate that the Petitioner's proposed endeavor is nationally important. The Director also determined that the Petitioner did not establish her proposed endeavor has broader implications, has significant potential to employ U.S. workers, and that it would broadly enhance societal welfare or cultural or artistic enrichment. Furthermore, the Director found that the Petitioner did not provide sufficient evidence to confirm whether her proposed endeavor will have substantial positive economic effects, particularly in an economically depressed area as contemplated by *Dhanasar*. *Id.* at 890. We agree with the Director.

On appeal, the Petitioner contends she submitted sufficient evidence to demonstrate that her proposed endeavor will have broader implications, substantial economic effects, and broadly enhance societal welfare. The Petitioner highlights the evidence submitted in support of the petition, in response to the Director's request for evidence, and on appeal to underscore the sufficiency of the submitted evidence. The Petitioner states that through her company, where she serves as a marketing and communications manager, she aims to assist companies in building and achieving successful growth by empowering their brands. She explains that she will leverage her expertise in business and marketing to enhance sales using innovative methodology of emotional education and creative strategies, supported by competitive media monitoring services.

The expert opinion letter's author discusses the Petitioner's experience and emphasizes the significance of emotional marketing to help businesses grow. The author maintains that the Petitioner's proposed endeavor is of national importance due to the impact of emotional marketing on consumers and businesses. In addition, the record includes letters of support that discuss the Petitioner's expertise in business and marketing as well as emotional marketing, with some authors

expressing their intentions to continue working with her. The Petitioner also submits industry report and articles discussing the impact of marketing and emotional marketing on consumers.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner claims her endeavor is nationally important, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that 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 record does not include adequate corroborating evidence, to show that the Petitioner's specific proposed endeavor offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

Though we acknowledge the Petitioner's assertions and the evidence she submits on appeal, we conclude that the Petitioner has not shown her proposed endeavor stands to sufficiently extend beyond her customers to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that her specific endeavor has national importance under *Dhanasar's* first prong. The Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. Specifically, the Petitioner has not demonstrated that her specific endeavor stands to provide substantial economic benefits in the United States. While the Petitioner claims that she will generate revenue through fees for workshops, online courses, and individual coaching lessons as well as through customized marketing services that will be offered to businesses and entrepreneurs, the record does not support the Petitioner's general assertions with corroborating evidence demonstrating the plausibility of those assertions. Furthermore, the lack of detail in the Petitioner's projections makes it difficult to determine how the Petitioner's proposed endeavor differs from that of other entrepreneurs in the same field in the United States.

While the Petitioner asserts that her company will increase the profits of companies and entrepreneurs and contribute to the overall economic growth and progress, she has not demonstrated that her undertaking has implications beyond the companies and individuals she elects to work with to impact the U.S. economy on a broad scale rising to the level of national importance. Nor has the Petitioner shown that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the country. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not indicate that the benefits to the regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 *Dhanasar* analytical framework's requisite first prong, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.