U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185422

Date: MAY 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computer engineer and IT consultant, 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 that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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,[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

A. EB-2 Classification

The Petitioner is a computer engineer and IT consultant. She submitted a diploma and transcripts for her degree in computer engineering from the [redacted], in Ecuador; along with an academic evaluation that states her degree is equivalent to a U.S. bachelor's degree in computer science. In addition, the Petitioner submitted employment letters that establish five years of progressive experience in the specialty. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree and we agree.

B. National Interest Waiver

1. Substantial Merit

The first 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. The Petitioner states that her proposed endeavor is to, "[d]evelop consulting, support and cybersecurity services for financial companies in order to comply with best business practices standards that allow a better workflow, providing an efficient quality service, while ensuring the security of their services and sensitive financial information they handle." The record includes articles and reports on the importance of information technology and cybersecurity in the financial industry along with various government initiatives supporting the industry. We conclude that the proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner asserts that the Director's decision, "[c]ontains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." In addition, she states that the Director provided an insufficient assessment of the totality of the evidence. Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner

[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).

did not demonstrate that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner contends the Director did not assess the record as she submitted probatory evidence to meet the national importance criteria. The Petitioner states that her proposed endeavor is of national importance because of the importance of cybersecurity and a thriving digital banking ecosystem. She points to the reports, articles, and research that was submitted regarding substantial merit and national importance, as well as her personal statement, and her national importance statement. Later in the appeal brief the Petitioner questions why USCIS states industry reports and articles can be submitted for national importance if they do not show national importance.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on, "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* 26 I&N Dec. at 889. We recognize the value and importance of the industry; however, working in an important field is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of her proposed endeavor. Although the industry reports and articles provide good background information on the industry itself, the industry being important to the U.S. government, and its substantial merit; without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

An endeavor may have national importance if it has, "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890. The Petitioner contends her proposed endeavor has significant potential to employ U.S. workers with the intent to hire seven employees; based on the plain language meaning of the word "significant" she defines as "having meaning" and the plural of the word "workers," meaning more than one worker. Although *Dhanasar* does not specify an exact number of workers the proposed endeavor should employ to be nationally important, this area of the analysis is about economic impact. It should have a broader impact to the region through staffing levels, business activity, or have other substantial positive economic effects to rise to the level of national importance. The record does not establish a prospective broader impact with this number of workers and therefore does not rise to the level of national importance.

Further, the Petitioner does not explain how the Director erred in their analysis that the proposed endeavor would not have "other substantial positive economic effects", but states she has, "demonstrated by a preponderance of the evidence, as explained before, that her endeavor will have substantial positive economic effects both regionally and across the Nation." No reference was made to any error in the Director's analysis, or why the Petitioner's proposed endeavor would have substantial positive economic effects. Therefore, the Petitioner has not established that her proposed endeavor would have enough of an economic impact through employment of U.S. workers or other economic impacts to rise to the level of national importance.

Dhanasar states a proposed endeavor may have national importance because it has, "national or even global implications within a particular field." *Id.* at 889. The Petitioner states in her updated national

importance statement that her endeavor will help credit unions in New Jersey meet their clients' needs, increase their efficiency, and help protect client information while focusing on cybersecurity mitigation and protection. While we acknowledge the importance of this work, the record does not establish that the Petitioner's endeavor has national or global implications within the field. 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. *Dhanasar* at 893. Similarly, the evidence here shows the services the Petitioner intends to provide to her direct clients, but it does not show how her services will impact the field more broadly to have national or global implications.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.