U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31144792

Date: MAY 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 EB-2 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.

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. 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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. 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.

With respect to her proposed endeavor, the Petitioner indicated that she planned to work "in industrial engineering and occupational risk management and innovation, with a focus in the areas of quality, environmental management, occupational health and safety, and innovative business management systems." She asserted that she intended "to implement and create [redacted] a business consulting firm that will provide affordable services to small and medium-sized businesses in the United States, improve the quality of life at work for American workers, provide safer work environments, and improve management of environmental impacts that reduce pollution." The Petitioner further stated:

> I will be able to help companies that consult with my company in a comprehensive way, providing high-level business advisory services, which will allow small and medium-sized companies to optimize their organizational structure, reduce their environmental impacts, reduce the absenteeism of [their] workers, thus guaranteeing to reach [their] objectives, providing a solid structure so that they can access a broader portfolio of customers in tune with the demand of the large companies and increasing their market share and the American business sales results . . . .

She also noted that [redacted] will provide the following services:

1. Design and formulation of strategic planning
2. Design of operation models by processes
3. Design of institutional risk maps
4. Design of business management systems
5. Preparation of environmental management plans to mitigate environmental impacts, calculation of the carbon footprint
6. Identification of risks for the prevention of occupational accidents and illnesses
7. Visits to industrial processes and inspections planned for companies with high-risk activities such as work at heights, dangerous energies, confined spaces, ionizing radiation
8. Internal audit services for small and medium-sized companies

In addition, the Petitioner asserted that her undertaking stands to offer "job opportunities to professionals with profiles of junior and senior consultants according to growth, it is expected that the first 3 years there will be at least 20 vacancies." This job vacancies projection, however, is not supported by details showing its basis or an adequate explanation of how it will be achieved.

The record includes information about occupational health, industrial engineers, the burden of poor working conditions, the economic benefits of health and safety management, occupational health and safety specialists and technicians, Florida Opportunity Zones, the state of small business in the United States, U.S. gross domestic product, small businesses as contributors to U.S. economic activity, top reasons for startup failure, small business concerns over navigating climate action, and practices for improving safety and health through supply chains. In addition, the Petitioner provided articles discussing recommended practices and health programs, the demand for safety professionals in the United States, the ways small businesses contribute to job creation and economic growth, bankruptcy's effect on U.S. consumers, the likelihood of a U.S. recession, the U.S. Occupational Safety and Health Administration, and factors contributing to small business failure. She also submitted information about White House initiatives relating to protecting worker health and safety, investing in small businesses, clean manufacturing, and protecting workers and communities from extreme heat.

We agree with the Director that the submitted documentation establishes the Petitioner's endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of the industry in which the individual will work or the value of small businesses in general; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of her specific proposed endeavor.

The Petitioner also provided letters of support from J-A-P-M-, L-M-C-F-, L-E-O-T-, A-M-R-B-, N-T-, P-J-T-, G-E-R-D-, and M-B-A-P- discussing her industrial engineering knowledge, environmental and occupational risk management capabilities, and business experience. In addition, the Petitioner presented letters from J-F-G-L-, F-G-, M-S-, and O-D- reflecting interest in utilizing her company's consulting services. The Petitioner's skills, knowledge, and prior work in her field, as well as interest from potential customers, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong. The letters from Petitioner's colleagues and prospective clients do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that her specific proposed work offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not demonstrated that her undertaking "stands to have a potential prospective impact on the broader field or otherwise have implications rising to the level of national importance." In addition, the Director indicated that the Petitioner had not shown "that the area where her company will operate is economically depressed, that it would employ a significant population of workers in the area, [or] that the proposed endeavor would offer the region or its population a substantial economic benefit."

In her appeal brief, the Petitioner argues that "hiring 20 U.S. workers is more than enough to meet the plain language of the criterion when coupled with the ample projection-based evidence provided in the record with respect to the likelihood of said employment of U.S. workers." The Petitioner, however, does not identify this "ample projection-based evidence" in the record. Nor does she adequately elaborate on her hiring projection or provide evidence supporting the need for the 20 employees. Unsupported

assertions and speculation have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).

The Petitioner further contends that her proposed endeavor "is aligned with three issues of vital importance to the U.S. government: supporting the growth development of small and medium-sized enterprises, reducing the environmental impacts caused by the business sector, and protecting the health and safety of American workers." She asserts that her undertaking stands "to help SMEs identify their environmental impacts and reduce them" and to assist "SMEs to develop safer work environments allowing them to improve the quality of life of their workers, reduce absenteeism and increase productivity and economic benefits for their businesses."

The Petitioner, however, has not provided evidence demonstrating that her proposed endeavor would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of her proposed endeavor stands to offer broader implications in her field or to generate substantial positive economic effects in the region where her company will operate or in other parts of the United States.

In *Dhanasar*, we 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. While the Petitioner's statements reflect her intention to provide advisory services to her company's clients, she 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, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its future clientele to impact her industry; the fields of industrial engineering, environmental management, or occupational health and safety; or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, 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 our nation. Specifically, she has not demonstrated that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or any other region of the United States. The Petitioner has not presented evidence indicating 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*. *Id.* at 890.

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 third prong 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 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.