U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30663102

Date: MAY 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or as an individual of exceptional ability. *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 attached to this EB-2 immigrant classification. *Id.*

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 immigrant 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).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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,[3] 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

The Director found that the Petitioner established her eligibility for the underlying EB-2 immigrant classification. Therefore, 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. The Director determined that the Petitioner's endeavor has substantial merit but not national importance under *Dhanasar*'s first prong.[4]

On appeal, the Petitioner asserts that the Director "overlooked or misunderstood" aspects of her case showing the national importance of her endeavor and generally erred in her analysis of the first prong of *Dhanasar*.[5] Upon de novo review, we agree with the Director's conclusion that the record does not sufficiently establish the Petitioner met this requirement.

The first prong of the *Dhanasar* analytical framework, concerning the substantial merit and national importance of the proposed endeavor, focuses on the specific endeavor the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business,

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[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] *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)..

[4] The Director also concluded that the Petitioner did not meet *Dhanasar's* second or third prongs.

[5] On page 9 of her appellate brief, the Petitioner also asserts that she "never declared an intention to establish a business in the U.S." and that the Director erred in considering this claim in her evaluation. However, on page 23 of the Petitioner's personal statement, she refers to herself as an "entrepreneur" and states that "it is impractical for me to secure a job offer from a U.S. employer as my endeavor requires performing services in the U.S. *through a business of my own*" (emphasis added). Accordingly, the Director did not err in relying on Petitioner's statements in the decision.

entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

In her personal statement, the Petitioner claims she is a business manager, who will work in sales and contract management. She proposes to offer "skilled business consulting services to clients operating in the commercial and financial sector, providing such companies with support in relation to improving or expanding their sales." She states she will "support U.S. businesses in the preparation for the purchase negotiation, commercial contract negotiation support, lease agreement negotiation support, and lease advice and support." The proposed endeavor has substantial merit. However, for the reasons discussed below, the Petitioner has not demonstrated her proposed endeavor's national importance and, thus, has not shown that she satisfies *Dhanasar*'s first prong.

On appeal, the Petitioner places considerable emphasis on her professional experience and skills. She asserts that we should evaluate her endeavor's prospective impact based on her "significant past achievements," including her contract negotiations with the Honduran government. The Petitioner further contends that it is her "rare expertise and services in contract administration" that will result in "unique solutions and benefits" for U.S. businesses.

In support of these claims, the Petitioner submitted an expert opinion letter written by an assistant professor at [redacted] The professor generally discusses the Petitioner's knowledge and experience in business and contract management and explains how her services could potentially help U.S. companies optimize their business processes, increase productivity, expand sales, and negotiate clear and favorable contracts. The Petitioner also included other letters of support written by former work colleagues.

However, the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work's prospective impact. Furthermore, while the professor's letter makes sweeping claims that the Petitioner's skills would support the financial health of U.S. companies and the U.S. presence in foreign markets, the letter does not offer specific details on how the Petitioner's endeavor would accomplish these goals or how any impact would extend beyond the direct companies and clients that the Petitioner will serve. A petitioner's skills and experience do not inherit national importance merely because they may be useful to future possible clients. Similarly, while the reference letters from the Petitioner's former work colleagues laud the Petitioner's experience and personal attributes, they do not discuss the Petitioner's proposed endeavor or specific impact thereof, including any potential broader implications of her work. As such, the letters are not probative of the Petitioner's eligibility under *Dhanasar*'s first prong.

The Petitioner reiterates her contention on appeal that her proposed endeavor is nationally important because it will positively impact the U.S. economy. The Petitioner asserts that her endeavor will assist small and medium-sized businesses improve their sales, reduce costs, increase productivity, and expand their market opportunities in Brazil and other countries. She also contends her work will enhance U.S. competitiveness in the global market because of her specialized expertise and skills in

contract management and negotiation. She contends that her endeavor has a "significant" potential to employ U.S. workers and lead to substantial positive economic effects.

We do not question the Petitioner's expertise and record of success. However, as we noted above, when conducting an analysis under *Dhanasar's* first prong we look to the proposed endeavor itself. Whether a specific petitioner is well-positioned to advance the endeavor is the question we seek to answer when we examine *Dhanasar's* second prong. Additionally, while any increased business activity certainly has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity resulting from her business management services—the specific endeavor proposed here—would rise to the level of national of importance. The Petitioner does not explain how her business management services are distinguishable from other business consultants' services, or how providing services for an individual company would have broader implications and extend beyond her immediate employer and its clients to have regional or national economic impacts. For example, while she claims she will help U.S. companies expand their businesses to Brazil and other countries by, among other things, utilizing her commercial and technical writing skills, as well as negotiating technical specifications or statements of work, these objectives simply describe the typical duties of a business manager and do not show that the Petitioner's specific proposed endeavor rises to the level of national importance.

Likewise, the Petitioner maintains on appeal that her endeavor will have significant national and global implications because it will impact the U.S. economy as a whole and generate profits, new investments, and new jobs, as well as enhance competition, increase the population's income, and increase the consumption of goods. The record, however, provides little detail on how the Petitioner plans to accomplish these objectives. Her general references to increased tax revenue, unspecified job creation, and additional investments in new opportunities rely on more generalizations about the results of typical business activity, rather than probative information about what the Petitioner plans to accomplish through the endeavor, how she will do it, and how it may have national importance.

The Petitioner also contends her proposed endeavor has national importance because the business consulting industry is facing a talent shortage and the demand for qualified business managers continues to grow. In addition, the Petitioner asserts that the United States government's initiatives regarding small businesses further support the national importance of her endeavor. While we acknowledge the Petitioner's claims regarding the value of management consulting services to the business field in general, simply working in an important field is insufficient to establish a proposed endeavor's national importance. The relevant question is not the importance of the industry or profession in which the individual will work. Instead, the focus is on the "specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

The Petitioner claims that she will implement "new contract management methodologies" and introduce "tools" for export control, cybersecurity, and intellectual property protection that will foster U.S. innovation and entrepreneurship. However, she has not offered any details regarding these "new" methodologies or tools such as, for example, explaining what they are or how they differ from those already available and in use in the United States. Instead, the Petitioner's proposed activities in her Professional Plan describe the typical work of a business manager, such as: helping clients understand procurement law, identifying and preventing risks, preparing and presenting contracts related documentation to clients, monitoring and recording the progress of negotiations, and keeping abreast

of norms and practices that govern processes in public companies. While a specific employer or company may benefit from the Petitioner's business management services, she has not sufficiently explained how this individual benefit will impact the field more broadly, such that it rises to the level of national importance as contemplated by *Dhanasar*.

Similarly, although the Petitioner claims she will contribute to U.S. national security and defense by working with governmental agencies and strategic sectors such as aviation and aerospace, she has not identified the means or method through which she will pursue accomplishing this vague objective through her endeavor. Again, the evidence does not adequately reflect how her work as an individual business manager at a private company would extend beyond the Petitioner's employer and its clients to impact U.S. national security and defense, other fields or industries, or the U.S. economy more broadly at a level commensurate with national importance. General conclusory statements without a sufficiently direct evidentiary tie between the proposed endeavor and the claimed economic and national security impacts are insufficient. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Without adequate evidence demonstrating any specific U.S. economic impact, job creation, or other significant economy activity directly attributable to her future work, the Petitioner's appellate claims linking her proposed endeavor to "positively impacting the entire nation's economy" and causing a ripple effect that will impact "not only her direct clients and businesses . . . but rather, the social welfare of Americans as a whole" are too attenuated to sufficiently show the proposed endeavor's prospective impact. The record does not provide an evidentiary basis to conclude that any ripple effects of her proposed endeavor will have such far-reaching results.

Because the record does not establish the national importance of her proposed endeavor as required by the first prong of *Dhanasar*, the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues and arguments concerning whether she has established eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We, therefore, conclude 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.