U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31035048

Date: MAY. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the audiovisual production field, 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 the Petitioner's eligibility for the requested national interest waiver. 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. 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).

Once 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

The Director determined that the Petitioner qualified as an advanced degree professional, but further concluded she did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner did not demonstrate eligibility under the *Dhanasar* framework and will dismiss the appeal.

The first *Dhanasar* 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the proposed endeavor intended to market small and medium-sized businesses has substantial merit. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not show it has national importance.

The Petitioner intended to operate her own company in the United States to assist minority-owned, small and medium-sized businesses to plan, design, and coordinate commercial and audiovisual projects and products. With a particular focus on businesses operating in areas designated by the Internal Revenue Services (IRS) as opportunity zones, the Petitioner aimed to increase the her customers' sales "through the use of high-quality audiovisual content as a tool to improve their reach and positioning in the local and national market." To do this, the Petitioner proposed to offer several services through her company, including audiovisual content planning and production, post-production support (including editing and the creation of special effects and graphics), as well as coaching and training in project management for the creation of audiovisual content on different digital platforms. In support of her endeavor, the Petitioner initially submitted a personal statement, a five-year business plan, and several articles, fact sheets, government publications discussing multiple federal initiatives aimed at promoting and developing small and medium-sized businesses, and the impact of these businesses to regional and national economies. The Petitioner also provided recommendation letters detailing her expertise in filmmaking, storytelling, audiovisual content creation, and project management for large-scale audiovisual projects, as well as evidence of the awards she received for her films.[2]

[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 to be discretionary in nature).

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

In response to the Director's request for evidence (RFE), the Petitioner submitted two additional personal statements summarizing her plans for her company and the claimed national importance of her endeavor, along with additional articles and government fact sheets, including the U.S. Small Business Administration (SBA) Strategic Plan for 2022 – 2026. In her new statements, the Petitioner elaborated on her plans to market her services to minority-owned businesses in underserved areas to help her customers "strengthen their marketing networks, marketing strategies, and online presence to open [them] to new markets . . . [and] increase their sales, productivity, sustainability, generate new jobs, and contribute to the revitalization and strengthening of the economy." The Petitioner also asserted that she would "participate in local and national events where [she] can transmit [her] experience, knowledge, and progress of [her] projects at conferences, fairs and academic events to motivate and empower young talents . . . [and] disseminate [her] knowledge, methodologies, and the innovative marketing strategies [she] develop[s]." Moreover, the Petitioner reasoned that, because the federal government recognizes the significance of developing small and medium-sized businesses, and particularly the success of minority-owned businesses, the Petitioner's proposed endeavor targeting these enterprises was of national importance.

While acknowledging the evidence submitted, the Director concluded that the record did not establish the national importance of the Petitioner's endeavor because the prospective impact of her endeavor would not sufficiently extend beyond her prospective clients to lead to broader implications to the industry or field. Moreover, the Director determined that the Petitioner did not establish that her endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

On appeal, the Petitioner asserts that the Director did not properly consider the evidence on record, imposed novel requirements, and showed a "misunderstanding and misapplication of [the] law that [went] beyond harmless error and reach[ed] the levels of abuse of discretion." As an example of this, the Petitioner points to the Director's conclusions that her "business plan d[id] not provide evidence to substantiate the projected rate of growth, nor d[id] it demonstrate the proposed endeavor offers benefits which extend beyond the community to impact the industry," and "the record d[id] not contain sufficient evidence to reflect that [...] it would employ a significant population of workers in the area." The Petitioner contends that these two Director conclusions imposed novel requirements because the Director did not consider the *prospective* impact of the endeavor and seemingly mandated a "baseline" number of employees to be hired, not specifically required under the *Dhanasar* framework.

Upon de novo review, we disagree with the Petitioner's assertion that the Director misapplied the law or otherwise abused their discretion. First, the Director did not require the Petitioner to substantiate that her company would meet the rate of growth, but rather establish the *basis* for the *projected* rate of growth. The Petitioner does not explain how the Director erred in their analysis of the limited impact of the proposed endeavor to the industry. While it is true that the *Dhanasar* framework does not require the Petitioner to establish that her endeavor is more likely than not to meet her projected rate of growth, unsubstantiated claims are not sufficient to establish national importance. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5. Likewise, the Director did not require the Petitioner to establish that her endeavor would employ a "baseline" number of employees or "employ a significant population of workers in the area," but only discussed this as one way the Petitioner could have shown the economic impact of her endeavor as "significant." *See Dhanasar* at 889. In the same section quoted by the Petitioner, the

Director also noted the record did not show that her endeavor "would offer the region or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue." Thus, the decision reflects that the Director considered multiple ways the Petitioner could have established the claimed substantial economic impact of her endeavor. So, the Petitioner's assertion that the Director "impos[ed] a previously unseen . . . novel or otherwise undefined and arbitrary requirement" is without merit. Furthermore, the Director did not focus exclusively on the claimed economic benefits of the Petitioner's endeavor when evaluating its national importance, they also considered the prospective impact of her endeavor to the audiovisual production field.

The Petitioner also relies on *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) to support her assertion that the Director erred in failing to consider all the evidence in its totality. But the court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *See, e.g., Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention").

Turning to our review of the record, we agree with the Director that the record does not establish, by a preponderance of the evidence, the Petitioner's proposed endeavor rises to the level of national importance contemplated under the *Dhanasar* framework. In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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

On appeal, the Petitioner continues to rely primarily on governmental interest in the success of small and medium-sized businesses to bolster the national importance of her proposed endeavor, but notably does not address the Director's conclusion that she did not establish how the broader implications of her endeavor would extend beyond her immediate customers to otherwise impact the field. For example, the Petitioner states that the Director erred in not acknowledging the articles and industry reports discussing various government initiatives aimed at helping small businesses, including the U.S. SBA's report stating that small businesses represent 99% of U.S. businesses, employ 46% of U.S. workers, and account for 33% of U.S. exports. However, this assertion by the Petitioner is relevant to the substantial merit of her endeavor, not its national importance. She does not provide support for her assertion that the "provided articles indeed demonstrate an interest from the United States in harnessing the Petitioner's knowledge and expertise." The articles do not discuss the Petitioner's work or her proposed endeavor. We acknowledge the Petitioner contends that the government initiatives

discussed in the record have inspired her to seek out minority-owned, small and medium-sized businesses for her customer base. However, when considering the national importance of a proposed endeavor, the industry or customer base a petitioner will serve alone is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not shown the broader implications of her proposed endeavor, however admirable, rise to the level of national importance. In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's clients, like the offerings outlined in her business plan, would not have broader implications in the field. *Id.* at 893.

Similarly, the Petitioner has not corroborated her assertion that her participation in "conferences, fairs and academic events" would result in the dissemination of "methodologies [and] innovative marketing strategies" at a level commiserate with national importance. For example, the record does not establish what, if any, innovative marketing strategies the Petitioner will introduce to the field, nor the conferences she planned to target, as necessary for us to evaluate the broader impact of her prospective presentations. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

In addition, while we recognize that the Petitioner has had a successful career developing audiovisual content in both the artistic and marketing spaces, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor. Likewise, the testimonial evidence in the record, such as the recommendation letters, and letters of intent, do not analyze the Petitioner's specific proposed endeavor or offer evidence of its impact, beyond commenting on her expertise.

Finally, the Petitioner's claim that her endeavor is nationally important because of her intent to work and serve economically distressed communities designated as opportunity zones by the IRS is not persuasive. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her proposed endeavor would rise to the level of national importance. First, as the Petitioner does not have a physical location for her proposed business, the Petitioner has not offered sufficient evidence that her business will in fact in an IRS opportunity zone. Likewise, the record does not support the Petitioner's claim that her endeavor "will have broad positive impact by helping boost economic prosperity in underutilized business zones and ensur[e] employment opportunities in underserved communities." In the business plan, the Petitioner indicated that by the fifth year of operations she anticipates her company will have an annual revenue of $525,803 and an annual federal tax payment of $11,490. She also indicated that by year five, she intends to employ five full-time employees with a payroll expense of $202,754 annually. However, as discussed previously, the business plan provides little explanation and objective basis of these projections. Even if the endeavor's revenue and job creation projections were sufficiently corroborated, they do not establish that the endeavor would operate on a scale rising to the level of national importance. The Petitioner has not sufficiently explained and supported with documentary evidence how her proposed employment numbers and revenue would impact the area of intended operations.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

## 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

**ORDER:** The appeal is dismissed.