U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31149176

Date: MAY. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, 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 EB-2 immigrant classification or 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

On appeal, the Petitioner asserts she is eligible for the requested EB-2 immigrant classification as an advanced degree professional as well as the requested national interest waiver. Upon de novo review, we conclude the Petitioner is not eligible for a national interest waiver under the *Dhanasar* framework, and we will therefore decline to reach and hereby reserve the issue of her eligibility for EB-2 immigrant classification.[2]

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 has substantial merit as the endeavor falls within the range of areas we indicated could demonstrate an endeavor of substantial merit: business and entrepreneurialism. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not establish it has national importance.

The Petitioner intended to work in the United States as a financial manager and own and operate a financial services company that would "contro[l], inspec[t], and audi[t] the accounts of private companies," to help her clients avoid "the loss and waste of thousands of dollars . . . which can [then] be invested in productive areas and with greater return for the company and society." In support of her endeavor, the Petitioner submitted a personal statement[3], a five-year business plan, various reports and news articles discussing the impact of the COVID-19 pandemic on small and medium-sized businesses and their resulting financial challenges, a 2012 report on employment multipliers resulting from business development, and letters of recommendation. According to the business plan, the Petitioner planned to offer accounting, auditing and contract bidding services, including "comprehensive financial auditing and regulatory compliance review, budget analysis, financial strategic planning, cost-saving recommendations, project-specific financial planning, as well as contract and bid assessment, negotiation, writing, and submission support for a wide variety of contract

[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] Where a case warrants a dismissal regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)).

[3] We note that in the Petitioner's initial personal statement, she indicated her intent to open "a service provider in the frozen food segment"; however, as the Petitioner's business plan and her support letters only pertain to her proposed endeavor of operating a financial auditing service company, we will only address this endeavor on appeal.

types." The Petitioner intended to market her services to small and medium-sized businesses, asserting that her "advanced and precise techniques would minimize the occurrence of corruption in the expenditure of her [customer's] money." Pointing to the societal impact of corruption and the importance of small and medium-sized businesses, the Petitioner asserted that her endeavor would be in the national interest since it focused on limiting corruption and improving her customer's business operations.

The Director concluded that the record did not establish the national importance of the Petitioner's endeavor because its prospective impact would not sufficiently extend beyond her prospective clients to impact the industry or field more broadly. Moreover, the Director determined the Petitioner's business plan did not establish that her projected employment of five employees would result in substantial positive economic effects.

On appeal, the Petitioner contends that the Director did not properly consider the evidence on record and misapplied the law and policy. As an example of this, the Petitioner quotes the Director's conclusion that "the [P]etitioner has not shown her proposed endeavor . . . stands to sufficiently extend beyond the individuals the petitioner would serve to impact the industry or field more broadly," asserting this reflects that the Director impermissibly focused primarily on the geographical breadth of her proposed endeavor. The Petitioner claims that the Director did not sufficiently evaluate the economic impact of her propose endeavor, including her proposed employment of U.S. workers, its impact on a matter that the government has described as a subject of national initiative, and its resulting societal benefits. We disagree.

Notably, on appeal, the Petitioner does not discuss *what* evidence the Director did not properly consider, and instead simply asserts broadly that the Director's conclusions were erroneous. However, while it is true that *Dhanasar*'s analytical framework "seek[s] to avoid overemphasis on the geographic breadth of an endeavor," a petitioner should still establish the "broader implications" attributable to their proposed endeavor rise to the level of national importance. *Dhanasar* at 884-885.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

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 the importance of the financial auditing field, societal interest in combating financial corruption, and the importance of small and medium-sized

businesses. Yet this misapplies the *Dhanasar* framework. While we acknowledge that it may be reasonable to conclude that "small business owners and entrepreneurs form the backbone of the American economy," when evaluating 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. Similarly, while the Petitioner has provided numerous articles discussing the financial challenges facing small and medium-sized businesses, these articles do not discuss the Petitioner's endeavor, nor do they establish how the benefits provided to her clients would result in broader national implications.

Likewise, the record does not support the Petitioner's assertion that her endeavor is nationally important because of its "potential to improv[e] societal welfare and [result in] substantial positive effect." While the Petitioner asserts that her work and techniques will "minimize the occurrence of corruption," she has not shown how her company's services would meaningfully address corruption, impact society more broadly, or result in substantial economic effects as contemplated in *Dhanasar.* While we agree that financial corruption negatively impacts both societal welfare and the U.S. economy, this relates to the importance of proper accounting and compliance in general, rather than the Petitioner's specific endeavor. The evidence on record does not support that the services provided by the Petitioner will directly result in broader implications to the field, or meaningfully address corruption at a scale commiserate with national importance. 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).

The Petitioner also asserts on appeal that her specialized accounting services would "empower small business owners and entrepreneurs with the necessary expertise to make informed decisions, optimize their financial operations, and ensure sustainable growth." Again, this prospective impact only relates directly to the Petitioner's potential clients. 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, the Petitioner's endeavor, which will only benefit her clients, would not have broader implications in the field. *Dhanasar* at 893.

In addition, the Petitioner also relies on her prior experience in the field to establish the importance of her endeavor, stating that the Director erred because "the presence of a professional with more than 9 years of professional experience and a bachelor's degree" would not only generate revenue for her clients, but "actively creates financial bridges, and prompts economic developments that enhance and improve the functionality and monetary output of the nation's economy." Yet, the Petitioner does not elaborate on how her experience, and more importantly, her specific endeavor, would result in broader impact to the U.S. economy. While we recognize that the Petitioner has had a successful career, 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 provided letters of recommendation do not analyze the Petitioner's specific proposed endeavor or offer evidence of its impact, beyond commenting on her expertise.

Finally, we have reviewed the Petitioner's business plan, and agree with the Director's conclusion that the Petitioner did not establish that her endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* 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. In the business plan, the Petitioner indicated that by the fifth year of operations she anticipated her company would have an annual revenue of $966,144 and an annual federal tax payment of $69,277. She also projected that she would employ 5 employees and have payroll expenses of $472,023 annually. Notably, however, the business plan does not provide sufficient explanation for the basis of these projections. And, even if the endeavor's revenue and job creation projections were sufficiently explained, they do not establish that her company would operate on a scale rising to the level of national importance. The Petitioner has not explained how her proposed employment numbers and revenue would impact her company's 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 as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *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.