U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31125264

Date: MAY 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant, seeks classification as a member of the professions holding an advanced degree. *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 that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 only cited issue in the denial notice 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 had established the substantial merit of the proposed endeavor, and shown that she is well positioned to advance that endeavor, but that the Petitioner had not established the national importance of the endeavor and had not satisfied the third prong of the *Dhanasar* national interest test.

In her native Colombia, the Petitioner earned a bachelor's degree in accounting in 2015 and ran her own company full-time from 2016 to 2018, continuing part-time through 2021. She worked for the [redacted] from 2018 to 2020, for a forensics firm in 2020, and for [redacted] from 2021 to 2022. In June 2022, the Petitioner entered the United States as a B-2 nonimmigrant visitor.

In a statement submitted with the initial filing of the petition, the Petitioner described her proposed endeavor, with a focus on small and medium-sized enterprises (SMEs):

> My proposal is . . . the creation of a consultancy that will provide professional accounting and tax Consulting, Advisory and Audit services. It will also provide advice for the creation of small and medium-sized companies. . . .
>
> The [endeavor] . . . is based on a system created by me called [redacted] (Spanish acronym), which seeks [to]:
>
> - Reduce excess operating costs . . . ;
> - Help in the economic sustainability of companies through market strategies that make them more competitive . . . ;
> - Promote the creation and formalization of entrepreneurship and business ideas . . . ; [and]
> - Train and support new and established companies, young entrepreneurs, mothers, head[s] of household and older adults who intend to start their own business.

The Petitioner stated that she would also establish an "educational platform for virtual businesses" in which she would provide interdisciplinary "training with a Stem approach (Science, Technology, Engineering and Mathematics)." The Petitioner stated that she would begin by "opening an office in [redacted] Texas," which would "hire 2 or 3 full-time people," adding to its staff as demand grows.

In a request for evidence (RFE), the Director requested "[a] detailed description of the proposed endeavor." In response, the Petitioner submitted a business plan for a company "which will offer tax assistance, advisory services, and business consulting." The Petitioner stated:

> My proposed endeavor is to take advantage of my extensive experience, in the field of Accounting and tax Consulting, Advisory and Audit with my skills of understanding the unique challenges that companies face. . . . I have the ability to react effectively to business problems . . . [and] to optimize the tools of companies through innovation that has resulted in increasing finances in a sustainable way.
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> My focus is on the expansive economic recovery of small and medium-sized businesses in the United States that were totally affected by the pandemic, natural disasters due to climate change among other factors. I will advance my proposed endeavor through implementing my business plan, which starts with a consulting firm in the state of Texas, then expand to other states such as Florida, Oklahoma and Louisiana. . . .

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An 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 889-890.

The Petitioner stated that her proposed endeavor "is nationally important because her undertaking will, among other benefits:"

- Improve businesses' efficiency through accounting consultancy;
- Incur substantial positive economic effects by supporting small and medium-sized businesses, which are a pillar of the U.S. economy;
- Align with the explicit priorities of U.S. government offices, agencies, and initiatives to invest in SMEs; and
- Fulfill a shortage of tax professionals in the United States.

The Petitioner submitted background information about accounting and small businesses.

In the RFE, the Director stated that the Petitioner did not submit enough information about the proposed endeavor "to show what specific ways this system may positively affect the accounting field, and assist SME's as claimed." The Director also stated that the Petitioner had not established "that the specific proposed endeavor has national implications in its field, or that it has the potential for significant positive economic effects." The Director asked the Petitioner to explain, in detail, the national importance of the proposed endeavor.

In response, the Petitioner stated that, as a consultant, she "will provide support in the recovery of the business with global transformation . . . to position the company for sustainable growth." The

Petitioner asserted that her efforts will "contribute[] significantly to economic reactivation, with special emphasis on depressed areas or difficult economic situation[s]." The Petitioner also stated that her customers "will be able to strengthen their business position and operations, thereby improving the overall economy and business environment in the United States."

The Petitioner's business plan discussed how businesses rely on accounting and tax services, and indicated that the Petitioner's company would help businesses to increase their profits, which in turn would result in higher employment and greater tax revenues.

The Petitioner also submitted further general background information about small businesses, unemployment statistics, and digital transformation.

The Director denied the petition, stating that the Petitioner had not adequately supported claims regarding the broader implications of her proposed endeavor. The Director acknowledged the general information about SMEs, but concluded: "the record remains insufficient to demonstrate that the specific proposed endeavor stands to impact the broader field or industry of marketing and small business, or otherwise have implications rising to the level of national importance." The Director noted that information about "the profession as a whole" did not establish "the prospective national impact of the . . . proposed endeavor."

The Director noted that the Petitioner had proposed a "system of business analysis as her main consultancy product offered to potential clients," but the Director determined that the Petitioner had not shown that her methods "would result in positive effects and implications for the accounting field and for SMEs as a whole that would rise to a level of prospective national importance." The Director further concluded that "the record does not include sufficient, objective evidence to demonstrate how the endeavor's hiring efforts would have any meaningful impact on unemployment, or have a meaningful impact on the creation of significant employment opportunities in general, in the U.S., or within the region in which the endeavor will operate," and that "[a]ny larger effect that the petitioner's business would have on the U.S. economy has not been established by the evidence and appears to be merely hypothetical."

On appeal, the Petitioner asserts that "each argument" in the record is "supported by objective, documentary evidence . . . . speaking to the inherent benefits of enhancing the economic recovery and resilience of small and medium-sized businesses in the United States through innovative and sustainable business strategies." The submitted evidence, however, is general in nature, discussing the overall, aggregate importance of SMEs to the U.S. economy. The materials do not address the Petitioner's proposed endeavor specifically, and therefore they do not establish that her specific proposed endeavor would have a significant impact on the recovery and resilience of U.S. small businesses at a nationally important level. Benefit to individual clients speaks to the substantial merit of the proposed endeavor, which the Director granted. It does not follow that every undertaking that stands to benefit some SMEs has national importance.

The Petitioner asserts that "the impact outlined in the Dhanasar framework does not focus solely on a geographical scale." But *Dhanasar* does require "broader implications" and "*substantial* positive economic effects." Id. at 889-90 (emphasis added). The burden is on the Petitioner to establish these

implications and effects, and we agree with the Director that the Petitioner's speculation based on general background information does not meet that burden.

In light of the above conclusions, the Petitioner has not met her burden of proof to show that she fully satisfies the first prong of the *Dhanasar* national interest test. Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we decline to reach, and hereby reserve, the Petitioner's arguments on appeal relating to the third Dhanasar prong.[2]

We do, however, note another issue of concern, relating to the Director's determination that the Petitioner had met the requirements to show that she is a member of the professions holding an advanced 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). The Director stated that the Petitioner had documented "progressive work experience in the Accounting field for more than five years after completing her Bachelor's Degree in Accounting on March 27, 2015." But the record does not support this conclusion.

From August 2016 to December 2018, the Petitioner worked full time as the executive director of a non-profit educational institution known as [redacted] In a statement newly written to support the petition, the Petitioner claimed that her duties there included "formulating . . . accounting systems," but she did not submit necessary evidence to support this assertion or to establish that her work at [redacted] was sufficiently related to accounting to qualify as experience in the specialty. Evidence of qualifying experience must be in the form of a detailed letter from the employer. *See* 8 C.F.R. § 204.5(g)(1). In this instance, a translated job verification letter from [redacted] listed ten responsibilities, without mention of accounting. Therefore, the preponderance of evidence in the record does not establish that the Petitioner's work at [redacted] was in the specialty in which she claims the equivalent of an advanced degree.

The Petitioner's other claimed full-time employment related more directly to accounting, but spanned less than four years from October 2018 to July 2022. Therefore, the record does not support a determination that the Petitioner possessed at least five years of progressive post-baccalaureate experience in the specialty at the time of filing. Any future filing by the Petitioner must address this deficiency with credible, verifiable evidence.

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

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[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).