U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34851623

Date: NOV. 01, 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 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualified as an advanced degree professional but 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 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. *Id.* at 889.

The record reflects that the Petitioner intends to operate her own consulting company, [redacted] focused on providing specialized technology services to the health care industry. Relying on her experience using artificial intelligence (AI) and data analytics within the healthcare field, the Petitioner intends to offer "strategic consulting services to help healthcare organizations develop and implement AI-driven strategies that align with their goals and objectives." Specifically, her company will "focus on delivering innovative solutions and strategic insights, offering expert advice to healthcare entities eager to leverage AI for enhancing healthcare services, improving patient care, and boosting overall operational efficiency." According to her business plan, these services will primarily include data management and AI solutions; strategic consultancy and professional training; and continuous support and partnership. She intends to target her company's services to a variety of companies in the healthcare industry, including healthcare providers and institutions, health technology startups, pharmaceutical and life science companies, government healthcare agencies, health insurance providers, and nonprofit organizations operating within the healthcare industry. Accordingly, the Petitioner asserted that her company is "set to significantly impact the U.S. healthcare industry by optimizing operations, enhancing patient care, and improving overall quality of health services."

In support of her endeavor, the Petitioner submitted a business plan which included a summary her company's offerings, a market analysis, and five-year employment and financial projections. Additionally, she submitted multiple letters of recommendation discussing the Petitioner's relevant

[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).

experience and her prior research relating to the use of data analytics, machine learning, and AI solutions in healthcare field, several industry articles and reports on the impact of AI and data analytics on improving health care processes and outcomes, government publications discussing the benefits of attracting STEM professionals to work in the United States, and evidence of prospective investment interest in her company.[2]

After issuing a request for evidence (RFE) to provide the Petitioner with an opportunity to supplement the record, the Director denied the petition, concluding that, while the Petitioner established the substantial merit of her endeavor, she did not establish its national importance under the first prong of the *Dhanasar* framework. Specifically, the Director concluded that the Petitioner had not established that her company's operations would result in broader implications to her field, beyond the benefits to her prospective clients. Moreover, the Director determined that the Petitioner did not establish that her endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects discussed in *Dhanasar*.[3] Accordingly, because the Petitioner did not establish the national importance of her endeavor, the Director concluded that she was not eligible for the requested national interest waiver, and the Director did not evaluate the Petitioner's claims pertaining to the remaining prongs of the *Dhanasar* framework.

On appeal, the Petitioner asserts that the Director did not properly evaluate the record, and did not consider the proposed endeavor's impact on matters that a government entity has described as having national importance or its potential to impact societal welfare. The Petitioner also contends that the Director erred by not evaluating the remaining *Dhanasar* prongs, citing to *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994). But in *Matter of M-P-* the Board of Immigration Appeals found they were unable to meaningfully review an immigration judge's motion denial when no explanation was provided for the decision. Here, the Director issued a decision that clearly articulated the basis for denial was the Petitioner's failure to satisfy the first prong of the *Dhanasar* framework, which is a requirement for establishing eligibility for a national interest waiver.

Likewise, although we agree with the Petitioner that the Director did not directly discuss every piece of evidence she considers as salient to establishing her eligibility for a national interest waiver, she has not established how those omitted documents demonstrated eligibility. In other words, the Petitioner did not demonstrate that the Director's failure to discuss every document in detail changed the outcome of the case. For example, the Petitioner contends that the Director erred in their decision because they did not evaluate evidence establishing interests from potential investors, evidence of the Petitioner's financial capacity to start the endeavor, as well as evidence of her prior participation in

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

[3] In their decision, the Director stated that the record did not show that the Petitioner's endeavor "would undoubtedly benefit the United States through increased income, employment of U.S. workers, and contribution to the country's Gross Domestic Product (GDP) or reach the level of 'substantial positive economic effects' contemplated by *Dhanasar*" While we agree with the Director's conclusion that the record does not show the Petitioner's endeavor will result in substantial positive economic effects as contemplated in *Dhanasar*, we agree with the Petitioner that *Dhanasar* does not require an endeavor to "undoubtedly" benefit the United States, and accordingly we withdraw the Director's statement. Likewise, we also withdraw the Director's statement that the Petitioner did not show her work served as an impetus for progress in her field, as this is not required to establish the prospective impact of a proposed endeavor. Nonetheless, because the Petitioner has not otherwise established, by a preponderance of the evidence, that her endeavor is of national importance, we decline to remand the matter on that basis.

panel and seminars and relevant awards. First, we note that the letter in the record relating to prospective investment states that the summary of terms to invest "has not been formally approved," by the equity company, and "does not constitute a commitment to invest." Additionally, while evidence of an investment interest "may provide independent validation and support of a finding of the substantial merit of the proposed endeavor or of the petitioner being well placed to advance the proposed endeavor," investment interest does not necessarily establish the broader impact of a proposed endeavor and its national importance.[4] Similarly, on appeal the Petitioner continues to rely on her professional experience and background to assert the national importance of her endeavor. We recognize the Petitioner's extensive experience in the field, as well as her involvement in relevant research, but 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.

Further, it is not enough to demonstrate errors in an agency's decision; the Petitioner must also establish that they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016). While we agree that the Director did not discuss every form of evidence she presented, the Petitioner doesn't establish through her appeal brief that these materials are sufficient to demonstrate her proposed endeavor has national importance. Accordingly, even if we agreed that the Director's failure to discuss each piece of evidence was an error, such a lapse would appear to be harmless and is insufficient grounds upon which to base this appeal. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)). The party that "seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Shinseki*, 556 U.S. at 409 (quoting *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943)); *Molina-Martinez*, 578 U.S. at 203.

Turning to our review of the record, we agree with the Director that, although the Petitioner has established the substantial merit of her endeavor, 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.

As stated, the Petitioner claims that the Director erred in not evaluating her claims relating to her company's prospective impact on matters government entities have identified as having national importance. The Petitioner submitted multiple articles discussing the challenges facing the healthcare industry, including rising healthcare costs, health inequities, and data fragmentation, and the

[4] 6 *USCIS Policy Manual* F.5(D)(4), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

governmental interests in addressing these challenges. These articles speak to the importance of and interest in relying on data analytics and AI in addressing challenges facing the healthcare industry, but do not establish the national importance of her specific endeavor. The articles do not address the Petitioner or her specific proposed endeavor. And the record does not sufficiently explain and support with evidence how her consulting company would directly address these initiatives on a level commensurate with national importance.

For example, the Petitioner contends that her company will address the issue of data fragmentation of patient information by offering data management services using data analysis and predictive modeling, explaining that this work could "help healthcare institutions in facilitating improved care coordination and decision-making." Yet, even if these benefits are realized by her prospective clients, the Petitioner has not explained how this would meaningfully impact the field or the government initiatives discussed in the record on a level commensurate with national importance, rather than only benefiting her customers. And, while the Petitioner relies on the importance of the AI and data analytics field, as stated above, when evaluating the national importance of an endeavor we look to the prospective impact of the *specific endeavor* rather than the importance of the collective field.

Similarly, on appeal, the Petitioner relies on her prior projects to establish that her endeavor can influence industry standards and contribute to the advancement and adoption of AI solutions in the health care industry, but she does not establish how her work on similar projects could rise to the level of national importance contemplated in *Dhanasar.* For example, in one project discussed the Petitioner used data to build and analyze indicators to improve patient wait times, which led to the reduction of delays and wait times, improved profitability, and increased revenue, which the Petitioner claims is an example of how she has the "capacity to influence industry practices and contribute to the advancement and adoption of AI and data analytics not only within her immediate community but also on a national scale." Yet, the Petitioner only identifies ways in which her work directly impact her employer, she does not explain how this same work, even if replicated through her endeavor, could result in broader implications to the industry. Accordingly, the Petitioner has not shown the broader implications of her proposed endeavor, however admirable, rise to the level of national importance.

And while we acknowledge the Petitioner's reference to USCIS policy recognizing the importance of STEM fields and role of persons with advanced STEM degrees in fostering progress in technological advancements,[5] the Petitioner has not shown that her endeavor will foster progress in STEM technologies or result in broader implications to her field. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Moreover, while the Petitioner asserted her intent to train other professionals in her field, she did not establish that any training she would provide, while certainly beneficial to her prospective trainees, would result in broader implications to the field. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. 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 or prospective trainees, like the offerings outlined in her business plan, would not have broader implications to the field. *Id.* at 893.

[5] 6 *USCIS Policy Manual*, *supra,* F.5(D)(2).

Likewise, while the Petitioner asserts on appeal that her company has a significant potential to employ U.S. workers and generate substantial positive economic effects, the record does not establish that these benefits, even if realized, will rise to the level of national importance contemplated in *Dhanasar*. On appeal, the Petitioner asserts that by concluding that the employment and payroll projections did not establish the economic impact of her endeavor, the Director ignored the prospective impact her company will have on the overall healthcare system. However, as stated, the Petitioner has not shown that her company will lead to broader impact beyond her customers, nor does the record support that, even if her company provides services to their prospective customers in reducing costs, and improving efficiency this would lead to substantial economic effects contemplated in *Dhanasar.* And, while we acknowledge the projections in the business plan, the business plan provides little explanation and objective basis of these projections. 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 result in the *substantial* positive economic effects contemplated in *Dhanasar*.

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.