U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34870978

Date: NOV. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an attorney, 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 that a waiver of the required job offer, and thus of the labor certification, would be in the best interest. The matter is now before us on appeal pursuant to 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.

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. *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;

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 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 Petitioner proposes to start a law firm, [redacted] with the aim of providing immigration paralegal and legal advisory services, preparing civil and criminal law petitions, appearing in court, and preparing individuals for immigration interviews. The Petitioner plans to "provide services to a broad range of business subjects within the industry."

In the denial decision, the Director determined the Petitioner qualifies for the underlying EB-2 visa classification as an advanced degree professional. However, the Director found the Petitioner did not establish eligibility for a national interest waiver as she did not demonstrate the national importance of the proposed endeavor; that she is well-positioned to advance the endeavor; or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification.

A. Substantial Merit and National Importance

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. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and 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.

Although the Director found the proposed endeavor has substantial merit, the Director also determined the evidence did not establish its national importance. Specifically, the Director found the submitted business plan and other evidence of record did not establish the endeavor would have broader implications, or national or global implications, within a particular field; significant potential to employ U.S. workers; substantial positive economic effects, particularly in an economically depressed area; broadly enhance societal welfare, or broadly enhance cultural or artistic enrichment.

On appeal, the Petitioner contests the Director's analysis of the record, contending a stricter standard of proof was applied to the case than the appropriate preponderance of the evidence standard. The Petitioner claims, in relevant part, that the Director did not give due regard to the Petitioner's submitted industry reports and articles that demonstrate both "the national importance of the [Petitioner's] proposed endeavor; as well as the steep shortage in the U.S. of professionals with her profile in the field." However, in the denial decision, the Director explicitly references the articles provided by the Petitioner and our review of the record reflects the Director considered the relevant evidence under

the appropriate preponderance of the evidence standard. In addition, the Petitioner's reliance on the need for entrepreneurs in the legal field in determining national importance is misplaced. The Petitioner claims the labor certification process is not relevant to her as her endeavor involves entrepreneurial efforts in an industry that is experiencing a shortage of workers. But the alleged shortage of occupations or occupational skills does not render the proposed endeavor nationally important under the *Dhanasar* framework. It is noted the U.S. Department of Labor directly addresses shortages of qualified workers through its labor certification process. *See id.* at 885; *see also* 20 C.F.R. § 656.1. And when evaluating national importance, the relevant query is not the importance of the industry or profession the individual will work, but on the specific endeavor the petitioner proposes to undertake. *Id.* at 889.

The Petitioner asserts her submitted industry reports and articles demonstrate that immigrant entrepreneurs, such as the Petitioner, have directly contributed to the recovery and growth of the U.S. economy. Before the Director, the Petitioner submitted articles and fact sheets about lawyers, law firms, the legal industry, and immigrant entrepreneurs. The Petitioner claims her own endeavor will produce income and assist in the development of the U.S. economy. The Petitioner contends that [redacted] is projected to generate wages to its employees exceeding five million dollars over five years. In addition, the Petitioner cites to her business plan in asserting her law firm will create a total of 34 direct jobs in the states of Massachusetts, Washington, and Ohio. However, the record does not contain supporting evidence corroborating the projected employment and financial figures indicated in the Petitioner's business plan or establish the significance of this data to show the endeavor would provide substantial economic benefits to the region or national economy more broadly at the requisite level. The Petitioner also asserts her endeavor, with ripple effects, will generate benefits to the business and operations industries and promote the success of U.S. corporations and investments. But while any economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the potential economic activity of her specific endeavor stands to create substantial positive economic effects in the relevant regions or that the endeavor's potential to employ U.S. workers is significant. In addition, the record does not demonstrate how the Petitioner's endeavor will extend sufficiently beyond impacting her own clients to advance or have broader implications in her field, at a level reaching national importance. Overall, the Petitioner has not offered established her proposed endeavor is nationally important and, as such, has not satisfied prong one of the *Dhanasar* framework to establish eligibility for a national interest waiver.

B. Additional *Dhanasar* Prongs

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach and reserve the Petitioner's arguments relating to the Director's adverse determinations of her eligibility under the additional prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.