U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33400853

Date: OCT. 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources specialist, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 national 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. 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

Id.

II. ANALYSIS

The Petitioner proposed to start a company specializing in human resources, [redacted] in which she would serve as general manager and lead consultant. In creating this company, the Petitioner intends to work with a broad spectrum of individual clients at every stage of their career development. The Petitioner expressed intent to focus on diversity and inclusion by offering workshops that focus on workplace skills to vulnerable populations, such as youth from disadvantaged backgrounds. The Petitioner also plans to provide aspiring entrepreneurs with support.

In the denial decision, the Director did not address whether the Petitioner established eligibility for the underlying EB-2 classification as an advanced degree professional or individual of exceptional ability. Rather, the Director denied the petition based on determining the Petitioner did not establish the proposed endeavor has both substantial merit and national importance and that, on balance, waiving the job offer would benefit the United States.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework for adjudicating a national interest waiver, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* 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.

The Director determined the evidence did not establish the national importance of the Petitioner's proposed endeavor as she did not demonstrate it would have broader implications in the field; have significant potential to employ U.S. workers; have substantial positive effects, particularly in an economically depressed area; broadly enhance societal welfare, or broadly enhance cultural or artistic enrichment.

On appeal, the Petitioner asserts her proposed endeavor has national importance due, in part, to its anticipated economic effect. The Petitioner asserts she plans to primarily operate in Florida but is also open to extending her services in additional states and regions, including economically distressed areas. The Petitioner contends she intends to hire nine consultants over a five-year period and that her direct hires could result in the creation of additional indirect positions. However, the Petitioner does not specify the nature or quantity of the indirect jobs she anticipates her company will create. Similarly, 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 asserts the nature of her work, seamlessly connecting individuals with employer positions, will positively affect both the unemployment rate and companies' growth. But the Petitioner does not clarify how her human resources company, connecting individuals with hiring companies, will affect the overall unemployment rate. 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 region or that her endeavor's potential to employ U.S. workers is significant. Overall, the Petitioner has not established the economic benefits of her work, assisting individuals in finding employment, will extend sufficiently beyond impacting her own individual clients and the companies in which they are placed, at a level commensurate with national importance.

The Petitioner also claims her proposed endeavor has national importance because it will create opportunities for individuals in particular need of employment or support. Specifically, the Petitioner asserts her inclusive hiring strategy will reach low-income Americans and unemployed individuals from marginalized communities. The Petitioner claims she will empower these individuals by providing access to job opportunities, offer workshops focusing on skills essential for the workforce, and enhance support through partnerships with NGOs and nonprofit organizations. In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the Petitioner has not established her proposed endeavor would sufficiently extend beyond the individual clients and companies she works with to impact the field of human resources more broadly, at a level commensurate with national importance.

The Petitioner further contends her proposed endeavor has national importance, as it impacts a matter government entities have deemed important and for which governmental initiatives have been created. Specifically, the Petitioner claims her endeavor will tackle the worker shortage, ensure all individuals will have access to meaningful employment opportunities, and prepare underserved youth for success in the labor market. We do not discount the importance of these issues, but our assessment of national importance does not focus on the importance of issues to the field in general, but instead "focuses on the specific endeavor that the foreign national proposed to undertake." *Id.* at 889. In *Dhanasar*, significant weight was accorded to "detailed expert letters describing U.S. Government interest in the petitioner's specific research." *Id.* at 892. Here, the Petitioner has not demonstrated the potential prospective impact of her specific endeavor to a matter that is the subject of governmental importance. Overall, the Petitioner has not offered sufficient information to establish 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* Prong

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve her arguments relating to the Director's adverse determinations of her eligibility under the third prong 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.