U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34967512

Date: OCT. 21, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a risk 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 Nebraska 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. 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 intends to start an Artificial Intelligence (AI) fraud detection company, [redacted] which will develop and implement AI-based fraud detection systems for fintech companies. The Petitioner plans to create algorithms to analyze large volumes of financial data, identify patterns and trends, and detect potentially fraudulent activity. The Petitioner claims her work will provide fintech companies with a tool to mitigate fraud risks, comply with regulations, enhance customer confidence, and contribute to the national interest in financial security and innovation.

In the denial decision, the Director found the Petitioner had submitted sufficient evidence to qualify as a professional holding an advanced degree and that the proposed endeavor is of substantial merit and national importance. However, the Director also determined the Petitioner is not eligible for a national interest waiver because she did not establish she is well-positioned to advance the proposed endeavor and that, on balance, waiving the job offer would benefit the United States.

A. Well Positioned to Advance the Proposed Endeavor

The second prong of the *Dhanasar* framework examines whether the petitioner is well positioned to advance the proposed endeavor and shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Director determined, after consideration of the relevant factors, the submitted evidence did not establish the Petitioner is well positioned to advance the proposed endeavor. We concur with that determination. The Director discussed evidence submitted by the Petitioner in support of this prong including: a business plan, letters of support, a resume, certificates of training, and letters of interest.

On appeal, the Petitioner asserts she has demonstrated that she is well-positioned to advance her endeavor. The Petitioner specifies that her education, skills, knowledge, and record of success were demonstrated by her academic degrees and letters of support. The Petitioner also claims that she meets the additional well-positioned factors based on her business plan, letters of interest in her endeavor, course completion certificates, and her professional license.

The Petitioner previously submitted a business plan for starting [redacted] as an entrepreneur. The plan asserts the Petitioner, who would serve as owner, CEO, and founder of [redacted] is well-positioned to advance her endeavor due to her educational and professional backgrounds. Though the business plan indicates the Petitioner will work with an AI

specialist to develop AI-based fraud detection systems, both the Petitioner's proposed endeavor statement and "Model or Plan for Future Activities" claim the Petitioner will apply her "knowledge and experience to create algorithms that can analyze large volumes of financial data, identify patterns and trends, and detect potentially fraudulent activity at an early stage." The record contains letters for the Petitioner from previous employers verifying she has years of experience in the field of risk management. The letters specify the Petitioner's duties, including, in part: execution of management activities, development and implementation of ERM methodology, ensuring compliance, filing claims, negotiation, hedging market debt, and administration of letters of credit. However, while the letters establish the Petitioner's extensive experience in working for companies in the field of risk management, they do not establish that she has previously been an entrepreneur, owner, CEO, or founder in this field or that she has experience in the professed main objective of [redacted] creating algorithms for AI-based fraud detection. Similarly, the Petitioner's bachelor's degree in financial administration, master's degree in business administration, professional license, and acquired course certificates do not demonstrate the Petitioner has experience as either an entrepreneur or algorithm-creator. We note the record includes two "independent advisory letters" from CEOs of companies, both of whom are not acquainted with the Petitioner. The Petitioner claims these letters demonstrate her record of success in the field of endeavor from individuals whom she neither knows nor has worked alongside. These letters assert the Petitioner's ability to execute her endeavor in the United States and even attest to "her proven track record in developing sophisticated algorithms that significantly improve the accuracy and efficiency of fraud detection mechanisms." However, as the authors of these letters have not met the Petitioner, the letters acknowledge their contents are based only on the examination of the Petitioner's "academic credential, professional experiences, and significant achievements." The letters do not specify the documents upon which they relied in forming their conclusions; as discussed, the documents submitted by the Petitioner in support of this petition and her specified endeavor do not demonstrate her experience in entrepreneurship or creating algorithms. Overall, the record does not establish the Petitioner's past experience renders her well positioned to advance her proposed endeavor.

We acknowledge the three letters of interest in the record. Two of the letters are from companies that express interest in working with the Petitioner as a risk management consultant based on her prior accomplishments and acquired expertise in regulatory compliance, third party risk management, and financial risk management. It is noted these companies express interest in working with the Petitioner as a consultant explicitly based on her previous expertise; the companies do not indicate their interest in the Petitioner's specified proposed endeavor as the CEO, owner, and founder of a company for which she would develop algorithms for AI-based fraud detection. And, as discussed above, the Petitioner's evidence does not establish her past expertise and experience in this endeavor. The last letter of interest appears to be from a company interested in offering its own services to the Petitioner, as testers of AI applications, rather than using the services of [redacted]

The Petitioner contends the Director erred in analyzing whether the Petitioner's work influenced her field of endeavor or whether she possesses a leading, critical, or indispensable role in her proposed endeavor as neither is required to demonstrate she is well positioned. The Petitioner also asserts the Director did not provide a thorough assessment of the evidence of record, as her independent advisory letters of support were not acknowledged in the analysis. However, the Director explicitly acknowledges the two independent letters of support submitted by the Petitioner in response to the request for evidence. We agree that in satisfaction of this prong, the Petitioner is not required to

demonstrate the influence of her work in the field of her endeavor or that she possessed a leading, critical, or indispensable role. However, for the aforementioned reasons, we concur with the Director that the Petitioner has not demonstrated she is well positioned to advance her proposed endeavor.

We acknowledge the Petitioner's business plan for [redacted] and verification of her education and work experience discussed above. But while the Petitioner has demonstrated her abilities in risk management, she has not sufficiently demonstrated skills and successes in the area of her proposed endeavor, entrepreneurship and algorithm creation. She has also not sufficiently shown her progress toward the proposed endeavor and, as discussed, the level of interest in the specified endeavor. As such, the Petitioner has not established she is well positioned to advance her proposed endeavor to satisfy the second prong of the *Dhanasar* framework.

B. Additional *Dhanasar* prongs

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach andreserve the Petitioner's arguments relating to the Director's adverse determination of her eligibility under 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 second 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.