U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34828687

Date: OCT. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources and organizational development consultant, 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 the Petitioner 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 a 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See 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.

According to the cover letter provided with the initial filing, the Petitioner "presents a proposed endeavor as a human resources consultant and organizational development professional" and her "unique and substantial work experiences have led her to the creation of her own methodologies and laid foundations of creating organizational roadmap detailing the business/strategic goals of an organization/firm or institution." The Petitioner indicated that she "has had the combination of experience, knowledge, and ability to substantially contribute to the human resources field in the United States" and her "field of endeavor has substantial merit and national importance."

The Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance and issued a request for evidence. In response, the Petitioner submitted additional documentation, to include recommendation letters, articles and reports discussing human resources and organizational development, and information related to her employment, income, and achievements. The Petitioner indicated that her proposed endeavor as a human resources manager with a specialization in human resources and organizational development has national importance because "human resource management is a necessary component of business success" and her endeavor "carries broader implications in improving public administration in the United States which rises beyond the organizations she will work for" to the level of national importance. In addition, her endeavor "as a human resources manager specializing in human resources and development" has a potential to employ U.S. workers; advance U.S. foreign policy goals and global human resources for U.S. entities working abroad; play a role in healthcare enforcement; improve labor relations and education nationally; and enhance the national security workforce, climate change mitigation efforts, and migration management.

In denying the petition, the Director concluded that though her proposed endeavor as a human resources consultant had substantial merit, the record contained insufficient evidence to demonstrate that the prospective impact of her endeavor rises to the level of national importance. The Director found that the evidence did not demonstrate the benefit of the Petitioner's endeavor would extend beyond potential clients or have broader implications to the overall field at a level sufficient to

demonstrate national importance. Further, the Petitioner did not show that her proposed endeavor would result in significant job growth or "substantial positive economic effects" as contemplated by *Dhanasar*.

On appeal, the Petitioner states that she is providing new evidence to be considered as part of her eligibility determination and submits a business plan and associated documents related to her newly established company in Virginia, news articles discussing the Petitioner and her achievements, and recommendation letters. The Petitioner asserts that the business plan outlines her "entrepreneurial endeavors and demonstrates [her] ability to establish and operate a successful business in the United States" and "provides a clear and compelling demonstration of [her] ability to create jobs, drive economic growth, and make a positive contribution to the U.S. economy." The Petitioner indicates that her endeavor "aims to enhance the effectiveness and readiness of existing and potential employees in U.S. Foreign Service and global development institutions through specialized HR and Organization Development (OD) services." She states that her endeavor focuses on "talent pipeline planning and management, human capital development, and work readiness training for employees, with a special emphasis on youth-at-risk and minority groups. These efforts will complement existing training initiatives for U.S. personnel in foreign postings and initiatives to rehabilitate youth-at-risk and minority groups in economically depressed cities across the U.S." The Petitioner argues that her proposed endeavor satisfies the national importance requirement and she outlines how the endeavor will increase employment of a diverse workforce, partner with advocacy groups to address aspects of social justice and human rights, and provide services and targeted training to enhance national security.

We note that the Petitioner provided new facts and evidence on appeal to support the claim that her proposed endeavor meets the national importance requirement. However, the business plan, documents related to her newly established company, and additional recommendation letters, are dated subsequent to the filing date of the instant petition in February 2024. A petitioner must establish eligibility for the benefit she is seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. at 49.

Upon review of the record as a whole, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether she had demonstrated, by a preponderance of the evidence, that she meets the first prong of the *Dhanasar* framework. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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 Petitioner discusses the value and importance of human resource and organizational development consultancy services and its impact on the U.S. economy and society, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession. *Id.* at 889.

The Petitioner provided recommendation letters and documents relating to her education and professional experience. However, the Petitioner's skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*'s first prong. The record in its totality does not show through supporting documentation how the Petitioner's specific services stand to sufficiently extend beyond her prospective clients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make findings on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.