U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33939923

Date: OCT. 31, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business 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 that the record does not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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.

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. *Matter of Dhanasar*, provides the framework for adjudicating national interest waiver petitions. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *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.

Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner is a business consultant whose proposed endeavor is to provide consulting, management, and process implementation advice and education activities to small and medium-sized, Latino owned businesses. The Director found that the Petitioner did not establish eligibility for any of the three prongs of the *Dhanasar* framework, and therefore is not eligible for a national interest waiver as a matter of discretion. On appeal, the Petitioner contends that the Director failed to, "rightfully consider the viable, probative evidence speaking to the national importance of the petitioner's proposed endeavor. . . ." Upon de novo review, we conclude the Petitioner's proposed endeavor does not rise to the level of national importance as set forth in the *Dhanasar* framework.

A. EB-2 Classification

The Director determined in their decision that the Petitioner did not meet EB-2 classification as an individual of exceptional ability. However, as the Petitioner correctly states on appeal, she applied as a member of the professions holding an advanced degree and the Director stated in the request for evidence (RFE) that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. The Petitioner submitted evidence of a master's degree in public administration from [redacted] Alabama and works as a business professional, therefore, the record establishes that she qualifies for EB-2 classification as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2).

B. National Interest Wavier

1. Substantial Merit

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. *Dhanasar*, 26 I&N Dec. at 889. The record contains industry articles and reports on the importance of small and medium-sized businesses to the U.S. economy and information on the economic impact of Latinos in entrepreneurship. We conclude that the proposed endeavor has substantial merit.

[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).

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner states on appeal that her proposed endeavor's national importance can be shown through the industry reports and articles in the record. The Petitioner emphasizes on appeal, "[t]he provided articles indeed demonstrate an interest from the United States in harnessing the Petitioner's knowledge and expertise towards the economic growth of U.S. businesses." 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 specific endeavor that the foreign national proposes to undertake." *Id.* The industry reports and articles in the record show the U.S. government's interest in industries related to the proposed endeavor and while we recognize the value and importance of the industry, working in the industry is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of her proposed endeavor. For example, the Petitioner submitted various articles on the importance of small businesses to the U.S. economy such as, "Fact Sheet: The New Small Business Boom Under the Biden-Harris Administration" and "Biden Seeks Increase in SBA Funding to Expand Small Business Access to Capital." While this shows government efforts to support small businesses, it does not establish the national importance of the Petitioner's specific proposed endeavor. Although the industry reports and articles provide good background information and the U.S. government's interest in the industry; without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

In addition, the Petitioner highlights articles in the record that discuss, "key economic and social challenges faced by the Latino community in the United States" which include articles on the economic state of Latinos in America, research on the importance of Latino small business owners on the U.S. economy, and an article on how immigrants help businesses grow. While we acknowledge the impact small businesses and the Latino community can have on the economy of the United States, this evidence does not show the impact the Petitioner's specific proposed endeavor can have on the United States, aside from the fact that she will be working within this industry. Without additional evidence establishing what the Petitioner's impact will be, it can only be determined that the proposed endeavor's impact will be limited to the clients and the companies it will serve. In *Dhanasar*, we determined that 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's proposed endeavor will be as a consultant assisting small and medium-sized Latino owned businesses and although the record provides information on the impact of the industry and how she intends to assist these clients, it does not establish her proposed endeavor's broader impact as *Dhanasar* requires.

Further, the Petitioner's personal statement regarding the national importance of her proposed endeavor also focuses on the state of the industry and not her specific proposed endeavor's prospective impact. The Petitioner discusses the large Latino population in the United States and the population's economic significance. She details what government initiatives and other community resources are available and areas where help is needed in this community. Although the Petitioner highlights an area that she believes needs assistance and her proposed endeavor intends to help, the record still does not establish the broader impact of the proposed endeavor. An undertaking may have national

importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Dhanasar*, 26 I&N Dec. at 889. As above, the Petitioner's personal statement emphasizes the national importance of the industry in which she seeks to work but does not further support the national importance of her proposed endeavor.

The Petitioner asserts that the personal statements submitted with the initial petition and RFE corroborate the economic benefits of the Petitioner's proposed endeavor. *Dhanasar* states, a proposed endeavor could rise to the level of national importance with, "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Id* at 890. The Petitioner's personal statements, as discussed above, highlight the economic impact of small businesses as a whole and the impact of Latino owned business. Although she discusses the intention to help these businesses, the record does not establish that the Petitioner's proposed endeavor itself will have substantial positive economic effects. In addition, the Petitioner's proposed endeavor statement lists government and community resources that already exist in support of these communities. She intends to be a "go-between" for her clients and these resources along with providing mentorship and business consulting support. Although there is merit to her endeavor, the record does not establish that her proposed endeavor will impact the industry more broadly or have substantial positive economic effects, particularly in an economically depressed area to impact more than her prospective clients.

Lastly, we note that the Petitioner highlights the Director's discussion of the recommendation letters as part of the national importance analysis. However, the part of the decision quoted by the Petitioner on appeal is located in the exceptional ability section of the decision. We agree with the Petitioner, that this evidence is more relevant to *Dhanasar's* prong two analysis, on whether the Petitioner is well-positioned to advance the proposed endeavor, than a national importance analysis. However, it was also appropriately analyzed under the exceptional ability criteria, even though the exceptional ability analysis was not needed. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory 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 alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established by a preponderance of the evidence that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.