U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33061315

Date: SEP. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who describes her proposed endeavor to work as a Training and Development Consultant/Entrepreneur, 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 record did not establish that the Petitioner merited a national interest waiver, as a matter of discretion. The matter is now before us on appeal. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id.* 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as an advanced degree professional. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner initially described her proposed endeavor to work with young professionals in the field of information technology (IT) and the field of science, technology, engineering, and mathematics—or STEM—as follows:

> All in all, [the firm] will contribute to the nation's future by building a highly skilled labor force. In a rapidly changing world, most growing tech companies in the U.S. work with an IT outsourcing firm or hire internationally to combat talent shortages. In 2019, before the pandemic hiring surge, 45% of 500 tech firms surveyed said that's why they were already hiring abroad. Those tech companies explore foreign offers, for example, for IT professionals, engineers, and other computer-related professions. The portfolio of services offered by the company will provide training and boot camp experience to young professionals, besides career evaluation and networking events. But the firm will also invest heavily in arranging remote work and internship contracts in [U.S.] companies for qualified candidates. It foresees outcomes that will have a high reach, training and connecting young professionals in STEM to work opportunities, providing career advancement and benefiting the [U.S.] economy as well.

The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, she did not demonstrate that her proposed endeavor would have national importance. On appeal, the Petitioner asserts that the Director's decision "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations" and asserts, without further explanation, that the Director applied a stricter standard of proof than that of preponderance of the evidence.[2] However, she does not identify any unusual requirements imposed, nor does she specify how the Director erred in the decision. This alone is grounds for dismissal. An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). Nevertheless, for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework.

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

[2] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In determining national importance, the relevant question is not the importance of the 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. In *Dhanasar*, we further 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work.

The Petitioner's business plan references growth trends in the field of information for business process outsourcing, a form of subcontracting that delegates certain business functions to third-party service providers and the field in which the Petitioner's firm would operate. However, she has not demonstrated that her proposed endeavor would serve to impact the industry or field more broadly, rising to the level of national importance. For instance, it is not clear how the Petitioner's operation of one firm in a field expected to increase its revenue—according to her business plan's industry and market analysis—to $61.6 billion by 2026 would have a positive economic impact at the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890. While the Petitioner indicates that her proposed endeavor would address IT and STEM workforce shortages in the United States, we observe that fluctuating opportunities within the general labor market do not demonstrate that her endeavor stands to have an impact on any of the numerous industries served by IT subcontractors or other STEM professionals, or otherwise have implications rising to the level of national importance. It is not clear how a business of the size and scope described in the business plan would address any purported workforce shortages in the IT or STEM fields that would constitute an impact on a national level.

On appeal, the Petitioner points to reports and articles provided in support of the petition discussing employment training and development, as well as the relationship between immigration and the U.S. economy. While this material provides general information related to the field in which the Petitioner intends to work, it does not provide insight into her plan to operate a training and subcontracting firm or show how this specific endeavor would have a potential prospective impact of national importance.

Further, on appeal, the Petitioner reiterates her original description of her proposed endeavor and points to information in her business plan, which includes an overview of her intention to create a total of 33 new jobs at her firm's anticipated locations in Virginia, California, and Washington. The business plan also estimates that, by its fifth year of operation, the firm will have paid a total of $3,834,400 in salaries and, after factoring in direct and indirect costs, the firm expects to have revenue totaling $2,385,583. However, the information in the business plan is not supported by objective evidence to demonstrate how her firm would have a prospective national impact on the field or on an economy of any scale. The Petitioner's claims do not provide an objective basis for her projections, nor are the numbers corroborated by probative evidence sufficient to demonstrate that it is likely her

firm would have a positive national economic impact or a national prospective impact within the field. The Petitioner has not provided sufficient evidence to show that she would employ a significant population of workers in a particular region, nor has she shown that her proposed endeavor would offer a region or its population substantial economic benefits through employment levels, business activity, or tax revenue. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner asserts the following (quoted as written):

> The Appellant's expertise and skill set will support U.S. businesses in developing a competitive edge in both national and international markets – this will push the nation to achieve whole new layers of productivity, affecting economic and commercial interests in the **Training and Development Consultant/Entrepreneur in IT Training and Consulting** industry.

However, this broad statement is not supported by probative evidence detailing how the Petitioner's proposed endeavor will actualize these ambitions as one firm within a multi-billion-dollar industry serving massive U.S. economic sectors such as healthcare, education, and transportation. The Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor based on its potential job creation or impact on the U.S. economy. Finally, while the Petitioner submitted letters from individuals who expressed general interest either investing in her firm or utilizing its services, these nonbinding letters—along with the Petitioner's statements and uncorroborated business projections—do not sufficiently demonstrate the prospective national impact of the Petitioner's proposed endeavor to train individuals entering STEM fields. USCIS Policy Manual guidance provides that while proposed teaching activities in STEM fields "may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance."[3] Here, the Petitioner has not explained how her proposed endeavor would have a broader impact in the field of STEM education or training.

The Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. Specifically, she has not shown that her business stands to provide substantial economic benefits to any particular locality or to the United States overall. As such, the business plan does not demonstrate that the prospective benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, 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

[3] 6 USCIS Policy Manual F.5(D)(2).

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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.