U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33345438

Date: SEP. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal 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 though the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 Petitioner's professional plan provided with the initial filing, she intends to "perform as a legal consultant, utilizing all of the knowledge [she has] acquired in the academic program and courses [she] completed, along with [her] professional experience, which have considerably contributed to the successful development of [her] work in an efficient manner, guaranteeing the best results." The Petitioner indicated that her proposed endeavor is to offer her "vast experience as a legal consultant in the area of commercial law, also known as mercantile law or trade law" which "applies to the rights, relations, and conduct of persons and business engaged in commerce, merchandising, trade, and sales." The Petitioner "will advise and provide legal consulting specialized in Bids and Contracts, with expertise in Public Law working directly in the legal procurement process that take place through Public Bids." She intends to take the American bar examination "in order to be licensed to practice law in the country and assist American citizens with the provision of high-performance legal services." In support of her eligibility, the Petitioner also submitted an expert opinion letter, recommendation letters, and documents related to her education and professional experience.

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 an updated resume and professional plan, a new reference letter, information related to her employment and income, and correspondence from two individuals discussing possible job offers. The Petitioner indicated that her proposed endeavor as a legal consultant has national importance because her "expertise in international business, public bids and procurement, sports infrastructure, healthcare, and startups irrefutably contributes to economic growth, job creation, and the advancement of industries on both national and international scales." Her proposed endeavor "will play a critical role in supporting and advancing" U.S. government initiatives relating to transparency and efficiency, corporate taxation and compliance, and international trade and business development.

In denying the petition, the Director concluded that though her proposed endeavor as a legal 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 employers at a level sufficient to demonstrate national importance. The Petitioner did not show that her proposed endeavor would result in significant job growth or "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890. The Director acknowledged the recommendation and expert opinion letters and determined that the record did not contain corroborating evidence demonstrating the Petitioner's work has potential implications that are of national importance to the United States.

On appeal, the Petitioner claims that the Director made numerous erroneous conclusions of law and fact. She asserts that the record demonstrates her "unique endeavor in the legal sector will have national and global implications in the field of business," contribute to "societal welfare as [the Petitioner] will ensure bidders are compliant with legal requirements including the Foreign Corrupt Practices Act," result in "substantially positive economic effects as she will foster international commercial opportunities to American companies," create "potential new employment opportunities in the American economy," and support "relevant government initiatives."

Upon review, 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 legal 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 and expert opinion 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 employers or 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.