U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33172027

Date: SEP. 23, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an accountant, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 although the Petitioner had established her eligibility for the EB-2 classification as a member of the professions holding an advanced degree, the record 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

Matter of Dhanasar, 26 I&N Dec. at 889

II. EB-2 CLASSIFICATION

As a preliminary matter, to establish that the Petitioner holds a qualifying advanced degree for EB-2 classification purposes, her petition must be accompanied by an official academic record evidencing a U.S. advanced degree or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(3)(i)(A). "Advanced degree" means a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.* The Petitioner therefore may alternatively establish that she holds an advanced degree for purposes of EB-2 classification by presenting an official academic record evidencing a U.S. baccalaureate or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing at least five years of progressive post-degree experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B); *see also* 8 C.F.R. § 204.5(g)(1).

The Petitioner has not established that she has a U.S. or foreign equivalent advanced degree, or that she has a U.S. bachelor's degree or a foreign equivalent degree, as she claims.[2] We therefore withdraw the Director's determination that the Petitioner qualifies for the EB-2 classification as "a member of the professions holding a bachelor's degree followed by at least five years of progressive experience in field of specialty."[3]

As evidence that she holds the U.S. equivalent of a bachelor's degree, the Petitioner submitted a copy of her *Titulo de Tecnólogico en Contraduría Financiera* issued in September 2009 and her *Titulo de Contador Públíco*, (Title of Public Accountant) issued in November 2013. Both were issued by the [redacted] in Colombia. The Petitioner also offered academic transcripts from [redacted] for each of these degrees, and an independent evaluation explaining and attesting to the claimed educational equivalency of her Title of Public Accountant certificate.

In this evaluation, the author noted that "the coursework required by the [redacted] Titulo de Contador Públíco program is substantially similar to the required course work leading to a Bachelor's Degree from an accredited institution of higher learning in the United States." When concluding that the Petitioner had obtained "the equivalent of a Bachelor's Degree in Accounting from an accredited institution of higher education in the United States," the evaluator also considered factors including "the number of years of course work" required for the *Titulo de Contador Públíco*. However, the evaluator does not indicate the duration of the *Titulo de Contador Públíco* program considered when reaching this conclusion. We note that the academic transcript underlying this degree in the record

[2] The Petitioner does establish that she has five years of progressive experience in her specialty.

[3] The Petitioner also claimed eligibility for the EB-2 classification as an individual of exceptional ability. However, because the Director concluded that the Petitioner was eligible as a member of the professions holding an advanced degree, the Director did not address this in denying the petition.

reflects a course work duration of two years, in contrast to a U.S. baccalaureate degree, which generally requires four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977).

The evaluator also concluded that the Petitioner "completed a prior Associate's-level degree which contributed to the equivalency" of the Petitioner's *Titulo de Contador Públíco*. However, the pertinent regulation at 8 C.F.R. § 204.5(k)(2) requires a bachelor's degree or foreign equivalent degree, which means individuals cannot combine experience, training or education to supplement the three-year education degree to equate to a four-year education degree. *See SnapNames.com, Inc. v. Chertoff*, 2006 WL 3491005 (D. Or. 2006) (where the beneficiary is required to hold a bachelor's degree or a foreign equivalent, a single degree is required).

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.*

Regarding the Petitioner's *Titulo de Tecnólogico en Contraduría Financiera* (Title of Technologist in Financial Accounting), the academic transcript accompanying this certificate indicates that the Petitioner received this degree after three years of study. The Electronic Database for Global Education (EDGE), which we consider to be a reliable source of information on foreign credential equivalencies[4], also indicates that a *Título de Tecnólogo* "is awarded after completion of 3 – 3 ½ years of study at a[n] instituto tecnológico (technical institute)" and that it "represents attainment of a level of education comparable to 3 - 3 ½ years of university study in the United States. Credit may be awarded on a course-by-course basis."[5] Accordingly, this evidence is insufficient to demonstrate, by a preponderance of the evidence, that the Petitioner's Title of Technologist in Financial Accounting is equivalent to a U.S. baccalaureate degree, which generally requires four years of education. *See Matter of Shah*, 17 I&N Dec. at 244.

Considering the foregoing, the Petitioner has not established that she qualifies for the EB-2 classification as a member of the professions holding an advanced degree. As the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve, the Petitioner's remaining argument concerning her eligibility for EB-2 classification as an individual of exceptional ability. *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).

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[4] *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

[5] *See* https://www.aacrao.org/edge/country/credentials/colombia for information regarding the education system in Colombia and credential equivalencies (last accessed Aug. 30, 2024).

III. NATIONAL INTEREST WAIVER

The Petitioner cannot qualify for a national interest waiver as a matter of discretion without first establishing her EB-2 eligibility. Even if we were to consider whether the Petitioner warrants a national interest waiver as a matter of discretion, we agree with the Director's ultimate decision to deny this waiver in part because the Petitioner had not established the national importance of the proposed endeavor, and therefore that she met the first prong of the *Dhanasar* analytical framework.[6]

On appeal, the Petitioner contends that she has demonstrated both the substantial merit and the national importance of her proposed endeavor.[7] Upon de novo review of the record in its entirety, the Petitioner has not done so, as required under the first prong of the *Dhanasar* analytical framework. While we do not address all of the evidence in the record individually, we have considered each piece.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar* 26 I&N Dec. at 889.

The Petitioner, an accountant, offered a statement with her initial application discussing research showing that there are opportunities for United States small and medium enterprises (SMEs) to expand into Latin American markets, and opportunities for the application of international financial reporting standards (IFRS) to U.S. SMEs. She indicates that her proposed endeavor will "generate the spaces to disseminate these concepts in North American SMEs, as the opportunities in Latin America are obvious." With her response to the Director's request for evidence (RFE), the Petitioner submitted a second statement explaining that her proposed endeavor is a "consultancy initiative that is not merely about adopting accounting systems; it's a strategic approach to empower SMEs to navigate the complexity of global landscapes" and that "[w]ith a focus on regulatory compliance, financial transparency, and effective decision-making [sic], this initiative aims to be a catalyst for the growth and success of SMEs, thereby fostering a resilient and thriving economic landscape."

On appeal, the Petitioner first contests the Director's conclusion that she has not "submitted a detailed description of the proposed endeavor." She asserts that in both her initial response and in her RFE response she has "always referred to the impact that [her] proposed effort would have on small and medium-sized business in the United States." In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* Upon review, the record does not include evidence of the Petitioner's proposed projects in the United States, or other information about the specific consulting work she will undertake in this country beyond the statements discussed above. It is therefore insufficient to identify the Petitioner's proposed endeavor.

The Petitioner also asserts on appeal that her proposed endeavor has national or even global implications within the field of accounting "due to the globalization-driven significant growth in

[6] The Director concluded the Petitioner had demonstrated the proposed endeavor's substantial merit.

[7] The Petitioner also asserts that the record shows that she is well positioned to advance the proposed endeavor, and that, on balance, waiving the job offer requirement would benefit the United States, thus satisfying the second and third prongs of the *Dhanasar* analytical framework.

international trade and the expansion of companies beyond national borders." She asserts that her skills and experience as an accountant will allow her to assist small businesses to grow and to give these businesses "access to a global market where companies can expand their reach and participate in international value chains, thereby enhancing their competitive and productive capacity." Reference letters in the record attest to the Petitioner's skill and prior work experience as an accountant. However, the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar* 26 I&N Dec. at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work.

In addition, the Petitioner contends that her proposed endeavor has significant potential to employ U.S. workers "by creating new strategic job positions and increased innovation and creativity, facilitating productivity growth" in contrast with other small businesses that don't "participate in international trade with other economically booming countries in Latin America" because they lack professionals with her skill set. She argues that, through this innovation and job growth, her proposed endeavor will enhance societal welfare by adding "benefits for both employers and employees in terms of income and quality of life, resulting in a healthier economy." Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. Beyond these assertions on appeal, the Petitioner does not offer evidence to sufficiently explain or demonstrate how her proposed endeavor would impact employment in the United States or otherwise benefit the regional or national economy. Therefore, she has not shown that the benefits to the regional or national economy resulting from her proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id* at 890. Further, absent evidence to show that her proposed endeavor would positively impact employment, she has not demonstrated that her proposed endeavor would enhance societal welfare, as claimed.

Finally, the Petitioner contends on appeal that her proposed endeavor is of national importance as it aligns with the goals of the Coronavirus Aid, Relief, and Economic Security (CARE) Act, which "prioritizes economic relief, especially for small businesses." While the CARE Act may indicate the importance to the U.S. government of prioritizing small businesses, it does not specifically show the government's interest in the Petitioner's proposed endeavor or similar endeavors. In evaluating national importance under the first prong of the *Dhanasar* framework, we will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. Here the record is not sufficient to show how the Petitioner's proposed endeavor impacts small businesses in the United States or the field of accounting in a manner rising to the level of national importance.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required under the first prong of the *Dhanasar* analytic framework, the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning her eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24 at 25 (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 at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

IV. CONCLUSION

The Petitioner has not established her eligibility for the EB-2 classification and therefore her qualification for a national interest waiver. Even had she done so, the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore find that the Petitioner has not established her eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.