U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33380882

Date: SEP. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal consultant, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although 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. 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. Next, a petitioner must then demonstrate 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*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[1] *See also 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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.

Id.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner intends to work as an entrepreneur/business consultant in the field of legal consulting. 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.

The Petitioner's initial submission for her company named [redacted] aimed to focus on two lines of service which she summarized as follows:

> "Business Consulting: for Brazilian Companies interested in doing business with or in the United States;" and "for U.S. Companies interested in doing business with or in Brazil."
>
> "Customs Consulting: for Brazilian Companies interested in export to the United States;" and "for American Companies interested in export to Brazil;"

The business plan stated:

> At the same time, the customs consulting services will allow companies struggling today to access a new consumer market, further strengthening the commercial ties between the U.S. and Brazil. In addition, mainly by serving Brazilian suppliers of commodities, the Company will be able to help reduce the costs of agricultural and mineral products for American buyers. Meanwhile, by serving American suppliers, the Company will be able to help reduce the costs of industrialized products for Brazilian buyers.
>
> In addition to her business management experience and team management skills, [the Petitioner] has a deep knowledge of Brazilian legislation and the needs and difficulties Brazilian exporters face. She also is an expert in the import and export process between the U.S. Therefore, [the Petitioner] is highly qualified to coordinate a business that offers the necessary services to promote the trade balance between the two countries, generating several benefits for their respective companies and economies.

In addition to the business plan and statement, the Petitioner submitted copies of her academic credentials and professional recognition, letters of recommendation, and an article on international trade.

The Director determined that the Petitioner's proposed endeavor had substantial merit but concluded that it did not rise to the level of national importance. The Director observed that the record did not establish that the Petitioner's consulting business would prospectively translate into benefits that would extend beyond her immediate projected business to have national benefits. Thus, the Director requested a detailed description of the proposed endeavor and an explanation why it was of national importance as well as documentary evidence so that her request for a national interest waiver could be evaluated under the *Dhanasar* framework.

In response, the Petitioner submitted, in part, a letter, employment letters, another copy of her business plan, and letters from potential clients and partners. The Director observed that in the business plan, the Petitioner discussed her professional achievements, the services her consulting business would provide, and the U.S. and Brazil economic relationship and government interest to demonstrate the national importance of her proposed endeavor. The Director noted that although the Petitioner claimed that her proposed endeavor would generate a total of $9,172,560.00 in gross revenue, a total of $8,631,561.00 in net revenue, a total of $4,351,101.00 in payroll expenses, and a total of $633,206.00 in U.S. taxes, the Petitioner did offer sufficient evidence to support her assertions. Moreover, as the Director noted, the record did not show a sufficiently direct connection between the proposed endeavor activities and either job creation or tax revenue. The Director determined that the letters from foreign investors interested in investing in the U.S. which cited the projected number of jobs their companies would create, were not supported by corroborating evidence to support the projected job creation. In denying the petition, the Director determined that the Petitioner did not provide sufficient evidence to establish the proposed endeavor's national importance.[2] The Director determined that the Petitioner had not shown that her proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner claims that the Director did not evaluate several vital pieces of evidence and made demands that went beyond the guidance of *Dhanasar*. She asserts her company aims to bring long sought after solutions to the United States in the following two areas: attracting foreign investment, generating new businesses and, consequently, creating jobs for American workers; and facilitating an increase in the volume of commercial transactions between the United States and Latin American countries, especially Brazil. She notes that U.S. presidents and government agencies have been desirous of solutions such as "nearshoring," while seeking to reduce the U.S. economy's dependence on goods produced in China.

Upon review, we agree with the Director's determination that the proposed endeavor has substantial merit. For the reasons set forth below, however, we concur with the Director's determination that the record does not demonstrate the proposed endeavor's national importance.

[2] The Director declined to address the remaining prongs of the *Dhanasar* framework concluding that further analysis would serve no meaningful purpose.

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. 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.

The Petitioner claims that her proposed endeavor has national and global implications. She states as follows:

> "I understand that, since the business that [redacted] will bring to the U.S. will establish their operations in different regions nationwide, and some of them will open units in different states . . . it is fair to say that my proposed endeavor will have national implications.
>
> Furthermore, as [redacted] will also help American companies become multinationals by expanding their businesses to the Brazilian market, increasing their revenues, becoming less susceptible to crises, and consequently maintaining a larger number of jobs in the U.S., I believe my proposed endeavor has global implications."

We recognize the value of legal consulting services. However, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

Similarly, the Petitioner emphasizes the value of legal consulting services instead of focusing on the prospective impact of her specific endeavor. The Petitioner discusses the benefits of legal consulting, highlighting how her expertise in Brazil as a "Customs, Business and Tax Attorney are fields of extreme geopolitical and economic importance for both countries." However, the Petitioner does not point to any corroborating evidence that would directly link her specific endeavor to the overall economy's growth. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Throughout the record, the Petitioner points to her background, education, and experience in her field. This included her time as a legal intern with the Customs Office in [redacted] Brazil, and then at the Attorney General's Office of the National Treasury in [redacted], Brazil; to her many years as an attorney working in her brother's firm and then as a solo practitioner "building an impeccable reputation." The Petitioner's knowledge, skills, and experience in her field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. 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. While the evidence indicates that she is an experienced attorney in Brazil who appears to be well-respected

by her colleagues, working with "professionals of the highest level" and serving "large clients," this is more relevant to the second *Dhanasar* prong regarding whether or not the Petitioner is well-positioned to advance the proposed endeavor. We also note that while a petitioner's past work and achievements may be helpful in illustrating how they plan to carry out their proposed endeavor or its potential prospective impact, the focus of the first prong is on the proposed endeavor itself and not the petitioner. *See id*. at 889.

The Petitioner submitted letters from foreign investors and cited the projected number of jobs their companies would create. The Director noted that although they discussed their interest in investing in the U.S., the letters were not supported by other corroborating evidence to support their projected job creation. On appeal the Petitioner acknowledges that the letters from the investors do not corroborate the projections in her business plan. She explains that the intention of the letters was to "demonstrate the potential success of the business since, at the time of sending the are RFE Response, I already had potential clients interested in hiring the company's services." Regardless, these letters from the Petitioner's investors are applicable to the second prong rather than the first prong of the *Dhanasar* framework.

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." *See Dhanasar*, 26 I&N Dec. at 890. Although the Petitioner recounts the value and importance of law and legal services and their general impact on business growth, and "seeks to bring investors to the U.S. and promote confidence in commercial transactions between Brazilian and U.S. companies navigating through different legal, tax, and commercial systems," *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 in which the individual will work. *Id*. at 889.

While the Petitioner claims the "business consulting services offered to Brazilian and American companies will help them to overcome barriers imposed by language, different culture, and different legislation from both countries," her objectives simply describe the typical occupational duties of a legal and business consultant rather than establishing that the Petitioner's specific proposed endeavor has national importance.[3] Additionally, other than listing these objectives, the Petitioner's professional plans do not provide further specific details as to how these objectives would be accomplished. The Petitioner's statements reflect her intention to provide valuable legal consulting services for her clients or employers, but she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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. *See id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently

[3] In determining national importance, the analysis focuses on what the petitioner will be doing rather than the specific occupational classification. For instance, although the petitioner in *Matter of Dhanasar* was an engineer by occupation, the decision discusses his specific proposed endeavor "to engage in research and development relating to air and space propulsion systems, as well as to teach aerospace engineering." *See generally* 6 *USCIS Policy Manual* F.5(D)(1), http://www.uscis.gov/policy-manual; *see also Matter of Dhanasar*, 26 I&N Dec. at 891.

extend beyond her employers or clients to impact her field, the legal and business sectors, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although her business plan includes financial calculations such as financial forecasts and salary projections for the first five years of operations, general assertions about her company's potential impact are not supported in the record by corroborating evidence of the plausibility of those assertions, and a lack of detail concerning her proposal makes it difficult to discern how the Petitioner's endeavor differs from that of others in the field who operate legal consulting firms in the United States. The Petitioner argues that the "decision may have been generated by a misinterpretation since even mentioning . . . the positive economic implications and recognizing the use of methodology of the Economic Policy Institute of the U.S. Government, the [Director] states: her business plan references employment information from the Economic Policy Institute . . . however, the claims made in the business plan are not supported by objective corroborating evidence, nor does the plan indicate the occupations these new jobs will affect or the area where these new jobs will be created." On appeal, the Petitioner argues that her use of the formula provided by the Economic Policy Institute already supports the projections with objective corroborating evidence, *Dhanasar* does not require petitioners to indicate exactly what occupations the jobs created will be and her projections do not demonstrate the positive impact caused to Americans or businesses, but rather the American economy, population and government by providing work that tends to promote the achievement of the country's national goals. However, the Petitioner intends to work as a legal consultant, yet she submits employment multiplier tables which do not show legal consultancy as a field. The tables do show the broad category of "management of companies." Thus, the multipliers apply to broad categories of businesses, rather than to the Petitioner's specific endeavor. General statistics do not illustrate why the Petitioner's proposed endeavor qualifies her for an exemption from the statutory job offer requirement. Again, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead USCIS must focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. 889.

Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's legal consulting services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar*, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.