U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34145371

Date: SEP. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer and entrepreneur, seeks second preference immigrant classification (EB-2) as 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 EB-2 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 Petitioner qualified for the underlying EB-2 classification, but that 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 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish 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 (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 Third, Ninth, Eleventh, and D.C. Circuit Courts to conclude that the national interest waiver determination is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director concluded that the Petitioner "is eligible for second preference classification" but did not analyze the evidence in reaching this conclusion.[2] Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

Regarding the Petitioner's request for a national interest waiver, the Director concluded that although the Petitioner established the substantial merit of her proposed endeavor and that she is well-positioned to advance the endeavor, she had not demonstrated the endeavor's national importance, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

The Petitioner's endeavor is to work as a civil engineer and as an entrepreneur operating her own company, [redacted] The Petitioner stated that "[m]y company will offer construction management services to engineering companies, real estate developers, and individuals looking to build their homes" and "[t]he company's focus will be to provide consulting and management to support sustainable construction projects." The Petitioner also indicated that the primary objective of her company "will be to enhance efficiency and reduce risks across all stages of a construction project – design, pre-construction, active construction, and post-construction."

A. National Importance of the Proposed Endeavor

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. In *Dhanasar*, we 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." *Dhanasar*, 26 I&N Dec. at 889. 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

[2] Here, the Director did not identify or analyze the educational evaluation or employment letters to determine that her degree is the foreign equivalent of a U.S. bachelor's degree and that she has at least five years of progressive post-baccalaureate experience in the specialty. *See* 8 C.F.R. § 204.5(k)(3)(i)(A), (B). The Director also did not evaluate whether the evidence establishes the Petitioner's qualification as an individual of exceptional ability by meeting three out of the six criteria set forth at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

On appeal, the Petitioner does not assert that the Director erred in denying the petition; instead, she reiterates her claims regarding the national importance of her endeavor, such as its potential to employ American workers, its commitment to sustainable economic development and revitalization of economically depressed areas in Florida, and its contribution to boost the U.S. economy in general "through the adoption of innovative technologies and sustainable practices in the construction industry." In support, the Petitioner resubmits the expert opinion letter, her business plan, and letters of recommendation, already in the record. As new evidence, the Petitioner offers more articles and reports demonstrating the general importance of the engineering profession, the challenges of the infrastructure workforce, and the need for sustainable materials and techniques in construction projects.

Although we recognize the value of the construction industry and sustainable practices in the construction field, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and look to evidence documenting the "potential prospective impact" of a petitioner's work. *Id.* at 889. The Petitioner submitted various background information about the construction field and industry, but she has not provided corroborating evidence that directly link her specific endeavor or her company to the overall economy's growth or its impact in economically depressed areas.

The expert opinion letter from an adjunct professor of mathematics at the [redacted] does not offer concrete and persuasive details concerning the endeavor's specific impact that demonstrates national importance. Instead, the letter largely dwells on the Petitioner's experience as a civil engineer, the importance of construction and project management in the field of construction, and the federal government's initiatives and priorities in improving the infrastructure and creating affordable housing.

The business plan's five-year projection for the Petitioner's company anticipates a staffing growth from 11 employees with a total payroll of $710,000 in year one to having 30 employees with a total payroll of $1,747,436 by year five. The plan also projects the company's total sales to grow from $1,220,000 to $3,397,587 in five years. However, the Petitioner does not adequately explain how these staffing numbers or sale forecasts were calculated. While the business plan indicates that it has growth potential, they lack corroborating evidence to support that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects." *Id.* at 890.

The Petitioner also contends that her company will contribute to bringing affordable housing to the economically disadvantaged population. However, the Petitioner has not offered sufficient evidence that the areas in which she has purchased lands or plans to build residential or commercial properties are economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or building projects.

The letters of recommendations from the Petitioner's former work colleagues do not address the Petitioner's proposed endeavor's specific impact or sustainability methodology that differs from or improve upon those already available in the United States, as contemplated by *Dhanasar*: "[a]n 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." *Id.* at 889. The authors describe the Petitioner's skills and past experiences as a civil engineer, but this type of evidence relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.

We acknowledge that any offer of goods or services has the potential to impact the economy; however, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Here, the Petitioner has not provided corroborating evidence, aside from the claims made in the business plan and her own statements, that her company's staffing levels and business activities stand to provide substantial economic benefits regionally or to the United States. The record is also insufficient in demonstrating that the Petitioner's innovative sustainable practices would impact the construction industry more broadly at a level commensurate with national importance. For these reasons, we conclude that the Petitioner's proposed endeavor does not meet the national importance element of the *Dhanasar*'s first prong.

B. Well Positioned to Advance the Proposed Endeavor

The Director determined that the Petitioner is well-positioned to advance her endeavor without analyzing the evidence under second prong of the *Dhanasar*'s analytical framework. We disagree with the Director's conclusion. The Petitioner's proposed endeavor focuses on her company and how her entrepreneurial activities will create jobs and positive economic impact to the United States. While the Petitioner's education in civil engineering and experience in the construction industry are sufficient for her continued employment in such field in the United States, we conclude the record does not demonstrate that she is well-positioned to advance her endeavor as an entrepreneur, as discussed below.

In the second prong of the *Dhanasar* framework, we shift our focus from the proposed endeavor to the Petitioner. *Dhanasar*, 26 I&N Dec. at 890. The *Dhanasar* decision spelled out several factors which can be considered in determining whether a petitioner is well-positioned to advance their proposed endeavor, including several which are pertinent to entrepreneurial endeavors. These include a record of success in similar efforts, any progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals. *See also* 6 *USCIS Policy Manual* F.5(D)(4), https://www.uscis.gov/policymanual (describing several categories of evidence that an entrepreneur may submit in support of a request for a national interest waiver, including ownership and an active or central role in a U.S.-based entity, documents showing a future intent to invest by an outside investor, incubator or accelerator participation, intellectual property, and relevant growth metrics for the startup company). In this case, the record lacks evidence which supports any of these factors.

The record demonstrates that the Petitioner has a degree in civil engineering from a university in Brazil and she has worked for construction companies throughout her career. Although the evidence includes many recommendation letters from former work colleagues, there is no evidence that she has previously attempted or succeeded in starting a new business. The letters only describe the Petitioner's knowledge and experience in the construction industry.

In addition, the record lacks documentation of any progress towards achieving this endeavor, which might include the establishment of the business as a legal entity, registration of the business, securing any necessary funding, renting or purchasing physical space for the business, and the hiring of employees and contractors.

Further, the record does not provide sufficient information regarding interest from potential investors or customers. The Petitioner included one letter of partnership from a home improvement company in [redacted] Florida expressing its intent to partner with the Petitioner "for her upcoming civil engineering business in the United States." However, the letter vaguely refers to the Petitioner's "significant contributions to the field" or "a broad range of knowledge in the Construction industry" instead of discussing the details regarding the nature of collaboration, investment, or contract to confirm such business partnership.

While "we do not . . . require petitioners to demonstrate that their endeavors are more likely than not to ultimately succeed," *Dhanasar* at 890, here the record includes more information about the Petitioner's experience as a hard-working employee in the construction industry than about the prospects of her proposed business. Accordingly, we conclude the Petitioner has not established that she meets the second prong of the *Dhanasar* framework.

C. Whether on Balance It Would be in the National Interest to Grant a Waiver

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims on appeal that she is eligible for a waiver due to the impracticality of labor certification as there is no provision in the Department of Labor regulations permitting a self-petitioning entrepreneur to file a labor certification. However, as the Petitioner has not demonstrated that she meets the first and second prongs of the *Dhanasar* framework, she is not eligible for a national interest waiver as a matter of discretion and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that her endeavor is of national importance or that she is well-positioned to advance her endeavor. Therefore, the Petitioner has not shown her eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.