U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33813902

Date: SEP. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager, 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 the Petitioner 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 matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

Though the Director did not make a finding regarding the Petitioner's qualification for the underlying EB-2 visa classification, the record shows she 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 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. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner indicated in her initial filing that she intends to continue using her expertise and knowledge to serve as a general operations manager of her own company. According to the Petitioner's business plan, she proposes to establish a company in Florida that will provide business administration management consulting, advice, and training services to educational institutions and small businesses. The plan states that the "estimated growth of the General and Operations Manager profession makes evident the urgent demand for professionals in this area across the country" and the state of Florida "presents great demand for the professional activities of [the Petitioner] since it presents many opportunities in the terms of the number of potential clients." The Petitioner also submitted an expert opinion letter, documents related to her education and professional experience, and recommendation letters in support of her eligibility.

The Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance and issued a notice of intent to deny. In response, the Petitioner submitted additional documentation, to include her presentation for future clients, recommendation letters, a personal statement of funds, and a letter from a company expressing interest in partnering with the Petitioner and investing in her company. The Petitioner indicated that she meets the national importance requirement because her "proposed endeavor is to transform companies with negative results into solid companies with positive results" and she "can do this through [her] management model, which involves management by results, creating performance indicators for the areas, through financial management, starting with cost management, going to price adjustment, and ending with income statements."

In denying the petition, the Director concluded that though the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate the importance of the Petitioner's endeavor on a national scale. The Director noted that the record did not demonstrate the potential prospective impact of the Petitioner's endeavor would extend beyond her future company and clients and have national implications. In addition, the Director found that the evidence did not establish the Petitioner's endeavor has significant potential to employ U.S. workers or otherwise offers substantial

positive economic effects for our nation. The Petitioner did not show that 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.

On appeal, the Petitioner claims that the Director erred by misapplying the standard of review, imposing novel substantive and evidentiary requirements, overlooking significant portions of the evidence, and not articulating why the evidence is not sufficient to establish her proposed endeavor will benefit the nation. She asserts that she is committed to hiring U.S. employees, thereby contributing significantly to the American economy as outlined in *Dhanasar* and demonstrated by her business plan. The Petitioner contends that her plans to establish a consulting advisory and training company will not only employ U.S. individuals but also significantly enhance the U.S. workforce and support government initiatives. She indicates that her company's projected payroll of $426,210 in the first year of operation underscores her dedication to job creation and aligns with the principles outlined in *Dhanasar*.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, 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*, *Id.* at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted recommendation letters and an expert opinion letter describing her professional experience and accomplishments and documents addressing the importance of supporting small businesses with skilled business advisors. 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. Additionally, the documents and letters failed to establish that the Petitioner's specific endeavor has national implications, significant potential to employ U.S. workers, or otherwise offers substantial positive economic effects for the United States.

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 providing quality business advice, consulting, and training, *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.

Further, the Petitioner did not demonstrate that her company's operations would provide substantial economic benefits to Florida, the region, or the U.S. economy more broadly at a level commensurate with national importance, nor did she demonstrate that her company's activities would substantially impact job creation and economic growth, either regionally or nationally. For example, the business plan projects that her company will hire 10 employees, including her own position, during the first five years. Moreover, the record does not sufficiently show how the company will pay salaries and other operational expenses with cumulative operating costs totaling $755,325 in the first year and $1.38 million in the fifth year. The Petitioner submitted a personal statement of funds indicating she will provide $39,273 for the company's initial expenses and a letter from a company expressing interest in partnering with the Petitioner and investing $30,000. However, the record lacks evidence of contractual commitments from this entity or other individuals to provide adequate investment funds. The submitted documentation does not contain sufficient details to demonstrate how the Petitioner's company will reach the stated economic impact objectives; how the company will pay for potential workers and business expenses; and overall, how her proposed endeavor will substantially impact job creation and economic growth in the region or nation.

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 remaining 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.