U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25611074

Date: APR. 5, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources specialist, seeks second preference 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 EB-2 immigrant 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 classification as a member of the professions holding an advanced degree, 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. 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 also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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 second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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. *Id.* at 890-91.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner initially stated on Form I-140 that her proposed employment is "human resources specialist" and submitted "Professional Plan & Statement" describing her proposed endeavor as follows:

> I propose to use my skills and knowledge, gained throughout my 15 years of professional experience, to work as Human Resources Specialist for U.S. organizations and businesses in need of an improvement in their recruitment and job placement practices, as well as to keep their workforce consistent.

The Petitioner added "[f]urthermore, I wish to continue helping people with my skills and expertise and start a non-profit project in order to assist people" and "[o]n the other hand, I want to establish my

private practice and contact companies to see if they need my human resources skills to help them fill job vacancies and better prepare their own professionals to become great candidates for promotion." The Petitioner's initial description of the proposed endeavor does not provide any other details beyond her intention to continue working as a human resources specialist for unidentified U.S. organizations and businesses. The Petitioner also did not include any specific plans or evidence about starting a non-profit or a private practice to either help individuals obtain jobs or assist companies in recruitment practices.

The Director's request for evidence (RFE) sought further information and evidence that the Petitioner meets each of three prongs of *Dhanasar* framework. In response, the Petitioner submitted "Definitive Statement" revising her proposed endeavor as follows:

> I intend to continue using my expertise and knowledge, gained through more than ten (10) years of experience and services as Human Resources Specialist, to develop a human resources firm, [redacted] in the state of Florida. The company will focus on the reduction of operational costs related to the historical low tenure of U.S. workers. It will handle all aspects of human resources, hiring services, and retention strategies, to reduce U.S. company turnovers.

The Director found that the Petitioner's proposed endeavor has substantial merit, but not national importance, and she also did not meet the second and third prong of *Dhanasar*. On appeal, the Petitioner contends that the Director did not apply the proper standard of proof and erred by not giving "due regard" to the evidence submitted, specifically the Petitioner's business plan and definitive statement, documentation of her work in the field, letters of recommendation, and industry reports.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what she claims is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met her 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.*; *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 her evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

As the Director already determined that the Petitioner's proposed endeavor has substantial merit, we will only analyze whether the Petitioner's endeavor is of national importance. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs. Upon de novo review, we find the Petitioner did not demonstrate that her endeavor satisfies the national importance element of *Dhanasar*'s first prong, as discussed below.

The Petitioner claims on appeal that she demonstrated national importance through previously submitted documentation of her expertise and experience in human resources field and letters of support discussing her knowledge, skills, and work experience as a human resources specialist. However, these documents relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance

under *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. *Id.*

The Petitioner's resume and recommendation letters only address her past accomplishments as a human resources professional impacting her workplace and do not address national importance of her endeavor's "potential prospective impact." For instance, a letter from the Petitioner's former colleague indicates that the Petitioner "worked tirelessly to make the company a better place to work" and "achieved a truly positive outcome for the company." Another letter, also from a coworker, states that the Petitioner "developed an essential strategic plan that brought about a considerable amount of improvement at the company" and "[Petitioner's] strategies to develop, enhance, and improve the overall quality of the performance of the company. . . enhance[d] the overall work performance in the company." We acknowledge that the Petitioner provided valuable human resources services for her employers in the past, but the Petitioner has not offered sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rising 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. *Id.* at 893.

In addition, these letters do not show that the Petitioner's proposed endeavor will substantially benefit the U.S. business industries and the field of human resources management, 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.* The evidence does not suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States.

We further note the Petitioner submitted an expert opinion that includes an analysis of the national importance of the Petitioner's proposed endeavor. The opinion states: "U.S. companies doing business or planning to do business in Brazil would benefit from the expertise and skills of a seasoned Professional such as [Petitioner] with an extensive knowledge of the Management industry in Brazil." However, the Petitioner has not stated, either in her "Definitive Statement" or "Professional Plan and Statement" that her proposed endeavor includes collaborative works between U.S. and Brazilian companies, or that she actively targeting U.S. companies that does business or plans to do business in Brazil. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

The Petitioner further claims national importance of her proposed endeavor based on previously submitted industry reports and articles describing a valuable role that human resources management plays in success and viability of businesses. The record also includes a study on human resources consulting industry in the U.S. which comprehensively covers the industry's overview, outlook, life cycle, market demands, success factors, key players, and relevant statistics. On appeal, the Petitioner provides additional articles featuring successful businesses led by immigrants in the United States. We recognize the importance of the human resources industry and career, as well as significant contributions from immigrants who have become successful entrepreneurs; however, 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." *See*

Dhanasar, 26 I&N Dec. at 889. 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." *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 previously made generalized statements on how ripple effects of her human resources work or her firm [redacted] would positively impact the U.S. economy, but the industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor. The Petitioner continues to claim on appeal that her endeavors will boost job creation, promote effective business advisory, and provide "unparalleled and full-service HR and business consulting to U.S. companies." The Petitioner also reiterates the business plan's five-year projection that estimates 17 million dollars in wages and three million dollars in taxes to the government. However, the business plan by itself does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized.[2] The Petitioner also has not provided corroborating evidence, aside from claims in her business plan, that her firm's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Subsequently, the Petitioner does not demonstrate that her proposed endeavors extend beyond her future clients or employers, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The economic benefits that the Petitioner claimed depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between her human resources work and the claimed results.

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's arguments regarding her eligibility under the second and third 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 find that the Petitioner has not established 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.

[2] For example, the business plan contains a section on "Project Milestones" which demonstrates that only goal met or in progress is to "obtain visa for owner" and the status of other tasks such as "company incorporation," "secure name & branding," "company bank account," and "initial investment deposit" are all either "on hold" or "not started."

ORDER: The appeal is dismissed.