U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28081750

Date: AUG. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a manager and lawyer, 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. 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 the record did not establish that the Petitioner qualifies for the national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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 EB-2 eligibility, 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director made no determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability. The decision only addressed the Petitioner's eligibility for a national interest waiver. Therefore, the issue for consideration 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 Director concluded that the Petitioner had established the substantial merit of the proposed endeavor and that the Petitioner is well positioned to advance the proposed endeavor, but the Petitioner had not shown the national importance of the proposed endeavor. The Director made no determination regarding the third *Dhanasar* prong, concerning whether, on balance, a waiver of the job offer requirement would benefit the United States. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework. We will also withdraw the Director's conclusion that the Petitioner satisfied the second *Dhanasar* prong by showing that she is well positioned to advance the proposed endeavor.

The Petitioner holds degrees in education and law. From 2000 to 2007, the Petitioner worked as a pedagogical coordinator for "a company providing services in the field of educational computing." From 2003 to 2019, a holding company that manages several fast food restaurants in Brazil employed the Petitioner as executive director, and later as a lawyer. In late 2018 and 2019, while still employed by the restaurant company, she was also general and operations manager and a lawyer at a law firm. The Petitioner most recently entered the United States in November 2019 as a B-2 nonimmigrant visitor, later changing status to that of an F-1 nonimmigrant student. When she filed the petition in December 2021, the Petitioner did not claim any employment experience in the United States.

The Petitioner described her proposed endeavor. Errors in the original text have not been changed:

> My proposed endeavor is to own and operate an Immigrants Entrepreneurship Support Solutions Office . . . , in order to provide immigrant's personal and business consulting and advisory. . . .
>
> Immigrants Entrepreneurship Support Solutions Office will handle all aspects of immigrant's personal management, such as access to basic North-American documents, personal and family location, accessibility to higher education; immigration consultancy and advice in the USA, such as visas and questions of nationality; immigrants business consulting and advisory, such as remodeling existing business and developing new business.

A business plan submitted with the petition indicates that the proposed endeavor would be:

> focused on the following sectors: immigrant individuals and companies created or to be created by immigrants. This office will provide consultancy and advisory [sic] on

general personal immigrant regularization and Latin-American immigrant business development in [redacted] Virginia. In addition, the office will provide online training services for general regularization of immigrant individuals and corporations throughout the United States of America.

A. Substantial Merit and National Importance

The first *Dhanasar* 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 submitted an advisory letter from an associate teaching professor at [redacted] University School of Law. We may, in our discretion, consider advisory opinion statements as expert testimony. But when an opinion conflicts with other information or is in any way questionable, we are not required to accept that evidence, and may give it less weight. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791 (Comm'r 1988).

The description of the proposed endeavor in the advisory letter is significantly different from the Petitioner's own description. The advisory letter indicates that the Petitioner "will use her experience in immigration advisory [sic]," but in her own statement and résumé, the Petitioner did not claim to have any experience as an immigration lawyer, advisor, or consultant. Her business plan emphasizes "experience . . . in the areas of human resources, legal and training."

The advisory letter indicates that "[t]he U.S. Commercial Service recommends that U.S. firms, with no physical presence in Brazil, partner with Brazilian firms before entering the market." The letter also states that the proposed endeavor will "help small and medium-sized enterprises in the U.S. improve operations and achieve better productivity and profitability levels." The relevance of these statement is not clear. The Petitioner herself did not claim that she intends to help optimize small and medium-sized U.S. businesses, or to operate a "Brazilian firm" to help "U.S. firms" seeking to establish a presence in Brazil. Rather, she stated that she seeks to establish an "Immigrants Entrepreneurship Support Solutions Office" in [redacted] Virginia, providing "personal and business consulting and advisory [sic]" to immigrants.

Likewise, the business plan includes a table listing the services that the Petitioner's company will provide. That table does not include providing services to U.S. companies seeking to expand into Brazil. Rather, its items include "Immigration Consultancy and Advisory in the USA" and "Immigrants business consultancy and Advisory in [redacted] VA." The business plan specifies "a focus on the Latin-American community, as well as consultancy and advisory services for businesses of immigrants who already reside in the region of [redacted] Virginia."

This stated "focus on . . . [redacted] would tend to limit the wider impact of the proposed endeavor. The business plan also refers to "online training services for general regularization of individuals and corporations throughout the United States," but provides few details about these services. The

Petitioner has not explained how, or shown that, this element of her proposed endeavor would have a significant impact on the immigrant community at a national level.

The Petitioner stated that her proposed endeavor "will directly create 5 new job opportunities in the US," while "[u]pdated employment multipliers" project about 29 "indirect jobs." The Petitioner asserted that her services would "creat[e] a chain of job creation," leading to further tax revenue. The proposed direct employees would consist of a receptionist, an audio/video technician, and two paralegals. The Petitioner provided statistics about the immigrant community in the [redacted] area, but did not estimate the impact her proposed endeavor would have on that community. The estimates in the business plan focus, instead, on the company's planned income. The Petitioner did not show that the aggregate benefit to individual clients would have national importance.

With respect to the claimed indirect jobs, the cited figure of 29 jobs appears to be a rough estimate based on "multipliers" averaged from all "[p]rofessional, scientific, and technical services," rather than any specific analysis of the Petitioner's particular proposed endeavor. Later, in response to a notice of intent to deny (NOID), the Petitioner cited different statistics to project about 10 indirect jobs, about a third of the initial projection. The Petitioner did not address or resolve this discrepancy.

Even then, the Petitioner did not establish that the direct and possible indirect jobs would have a significant or substantial economic impact consistent with national importance. *Dhanasar* does not state that every employment-generating endeavor has national importance. Rather, it states: "An endeavor that has *significant* potential to employ U.S. workers or has other *substantial* positive economic effects . . . may well be understood to have national importance." The burden is on the Petitioner to establish these effects.

The Petitioner's response to the NOID largely repeated prior assertions, already addressed above, and also included statistics about small businesses in the United States. The Petitioner has not claimed that her proposed endeavor will affect all small businesses in the United States. Rather, her stated focus is on immigrant-owned businesses in the [redacted] area.

The Petitioner also cited statistics about the field of management consulting. General statements about a particular field do not establish the national importance of the work of one individual in that field. Congress did not exempt management consultants from the statutory job offer requirement.

The Director denied the petition, stating that the Petitioner had not shown that significant benefit from her proposed endeavor would extend beyond her own clients "to impact the industry or field more broadly."

On appeal, the Petitioner submits a brief consisting largely of arguments and assertions previously submitted in the business plan and in response to the NOID, and thus already addressed above. The Petitioner cites additional figures relating to small businesses, but does not explain how her proposed endeavor will affect small businesses that are not her clients.

The Petitioner also states that current USCIS policy gives special consideration to entrepreneurs. This policy, however, does not broadly or presumptively exempt entrepreneurs from the statutory job offer requirement. Rather, it calls for flexibility in evaluating the evidence in each case, while affirming

that entrepreneurs must submit evidence to satisfy all the *Dhanasar* prongs. The *USCIS Policy Manual* states that "many entrepreneurial endeavors are measured in terms of revenue generation, profitability, valuations, cash flow, or customer adoption," but "other metrics may be of equal importance." *See generally* 6 *USCIS Policy Manual* F.5(D)(4), https://www.uscis.gov/policy-manual. This guidance does not indicate that a petitioner meets the *Dhanasar* prongs simply by submitting estimates or projections about revenue and other factors. Rather, we must weigh those claims, while also evaluating the corroborating evidence. The Petitioner has not shown that her projections rise to the level of national importance. The Petitioner submits statistics about local unemployment rates and tax revenue, but has not shown that her proposed endeavor will significantly improve the cited figures.

The appeal includes the new claim that the Petitioner will locate her business in [redacted] The Petitioner cites unemployment statistics regarding Hopewell and surrounding areas, but she does not show that her proposed endeavor would have a significant or substantial impact on unemployment, either locally or nationally.

For the reasons discussed above, the Petitioner has not established the national importance of her proposed endeavor.

B. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In this case, the Director concluded, without further explanation, that the Petitioner has established that she is well positioned to advance her proposed endeavor. We disagree.

A significant part of the Petitioner's proposed endeavor involves providing consultation to "Latin-Americans who want to immigrate regularly or who have already immigrated and are in an irregular situation," meaning undocumented status. The Petitioner, however, claims no prior experience or training in U.S. immigration law. Instead, the business plan cites the Petitioner's "experience as General Manager of Operations in the areas of human resources, legal and training," all of which took place in Brazil. The Petitioner's law school transcript, in the record, does not show any courses in immigration law. While documents in the record indicate the Petitioner is an F-1 nonimmigrant student, those documents specify her course of study as English as a second language, rather than law.

In response to the NOID, the Petitioner stated that the law firm where she worked for about a year "focused on law for Brazilian immigrants and their settling in Portugal." The Petitioner did not claim or establish that Portuguese immigration law is similar enough to U.S. immigration law that her experience with one conveyed a working knowledge of the other.

The Petitioner has not documented what steps, if any, she has taken to secure either bar membership in a U.S. jurisdiction, certification as a foreign legal consultant in the Commonwealth of Virginia, or

accreditation as a representative by the Board of Immigration Appeals. As a result, the Petitioner has not established that she is, or has taken steps to become, lawfully qualified to provide immigration services in Virginia.

The Petitioner has not established that she has education, skills, knowledge and a record of success in efforts related or similar to immigration consulting.

For the above reasons, the Petitioner has not shown, by a preponderance of the evidence, that she is well positioned to advance a proposed endeavor that involves providing legal advice relating to immigration. Also, the Petitioner has not established the nature or extent of her past experience helping individual entrepreneurs to establish or strengthen their businesses.

The Petitioner's response to the NOID includes a copy of a certificate from ServSafe, indicating that she had passed the "Food Protection Manager Certification Examination." The Petitioner took this examination in August 2022, eight months after she filed the petition. Therefore, this certification cannot establish eligibility at the time she filed the petition, as required by 8 C.F.R. § 103.2(b)(1). Furthermore, although the Petitioner claimed that the certification "demonstrate[s her] ability to assist and guide entrepreneurial immigrants in the food area," the certification appears to be for managers in the food industry, rather than for management consultants who advise those managers. The Petitioner did not claim to have taken similar examinations relating to other industries. Viewed in conjunction with the Petitioner's years of experience in the restaurant industry in Brazil, her pursuit of this particular certification appears to be more consistent with her own intention to work in the food industry than with a planned career in management and immigration consulting.

The Petitioner has submitted a business plan, but she has not shown progress toward implementing the plan or otherwise achieving the proposed endeavor, and she has not shown past experience establishing and running a similar business abroad. General statistics about small business and the immigrant community in [redacted] do not suffice to establish the interest of potential customers, users, investors, or other relevant entities or individuals.

Evidence establishing a petitioner's past entrepreneurial achievements and that corroborates projections of future work in the national interest are favorable factors. Claims lacking corroborating evidence are not sufficient to meet the petitioner's burden of proof. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(4). Here, the Petitioner has not shown a past record of entrepreneurial achievements. Most of her past experience was with a holding company that she does not claim to have owned or established, and she has not shown that she has, in the past, established and successfully operated a business resembling her proposed endeavor.

In light of the above conclusions, the Petitioner has not met her burden of proof to show that she satisfies the prongs of the *Dhanasar* national interest test relating to national importance and being well positioned to advance the proposed endeavor. Detailed discussion of the remaining prong cannot change the outcome of this appeal. Therefore, we reserve argument on the third prong.[2]

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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

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

ORDER: The appeal is dismissed.