U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28792783

Date: DEC. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an attorney and tax law specialist, 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, although the Petitioner qualifies for the underlying classification, the evidence did not establish the national importance of the proposed endeavor and that a waiver of the requirement of a 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, under section 203(b)(2) 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. 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

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

[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).

- On balance, waiving the job offer requirement would benefit the United States. [2]

II. ANALYSIS

The Petitioner earned a bachelor's degree in law from a Colombian university in 2019 and later completed a one-year post-graduate program in tax law at the same university. According to the Petitioner's résumé, after earning her bachelor's degree she worked as an associate in tax litigation with [redacted] (April 2020 until September 2021) and a legal and commercial advisor with [redacted] (beginning in September 2021), a company that sells oxygen therapy equipment. The Petitioner entered the United States in August 2021 as a B-2 nonimmigrant visitor for pleasure and filed this petition in August 2022.

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. Therefore, the primary issue before us 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.[3]

The first prong of the *Dhanasar* framework, "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 Director concluded that the Petitioner established the substantial merit of the proposed endeavor. However, for the reasons discussed below, the Director determined, and we agree, that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[4]

The Petitioner did not identify her proposed occupation on the Form I-140, Immigrant Petition for Alien Workers. Within the initial submission, the Petitioner, through counsel, indicated that she intends to work as a legal and tax consultant in the United States, "particularly in situations involving Development, consulting, and training pertaining to legal analysis applied to international trade and investment." In support of her claim that she can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner provided recommendation letters from colleagues. She also provided copies of articles from business, industry, and government publications, discussing the international trade specialist occupation, the management analyst occupation, the benefits of international trade, the mission of the Office of the U.S. Trade Representative, and the impact of trade on U.S and state-level employment.

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[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] Because we agree with the Director's conclusion regarding the Petitioner's eligibility for a national interest waiver, we reserve the issue of her eligibility for the underlying EB-2 immigrant classification. *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). We note that the submitted credentials evaluation concludes that she attained the foreign equivalent of a U.S. bachelor's degree in legal studies in 2019, and it is, therefore, not possible for her to have completed five years of post-baccalaureate work experience prior to the filing of her petition in August 2022, as required by 8 C.F.R. § 204.5(k)(3)(i)(B).

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

In a request for evidence (RFE), the Director observed that the Petitioner did not provide specific insight as to what she intends to do in the United States, and requested a detailed description of the proposed endeavor so that the Director could evaluate her request for a national interest waiver under the *Dhanasar* framework.

Within her RFE response, the Petitioner submitted a professional plan indicating her intention to open her own company to offer legal and tax preparation consulting services to help small and medium-sized U.S. firms and individuals improve operations and achieve better productivity and profitability levels. The professional plan asserts that these services will result in "generating revenues within the country and creating employment opportunities."

The plan further indicates the Petitioner intends to "pursue a master's degree in international taxation at the [redacted]" "open a branch of [redacted]," and "make strategic alliances with Colombian firms or startups to strengthen their business project," which "will bring job creation, bridge commercial relations between Colombia and the United States, increase the supply of medical equipment in the field of oxygen therapy, and expand legal services in an innovative way." The Petitioner's RFE response also provided an advisory opinion letter from Professor S-L-M- at [redacted]

The Director acknowledged the Petitioner's professional plan for her company and the expert letter submitted in response to the RFE but determined that she had not established the national importance of her specific proposed endeavor. On appeal, the Petitioner asserts that the Director did not give sufficient weight to the documentation submitted, which it emphasizes was "all based on research and sta[tis]tics collected from several experts and specialized government agencies." She maintains that her proposed endeavor "is of national importance to the international trade, financial, and compliance sectors in the United States" because it will help U.S businesses in "promoting compliance with regulations and ethical business practices, optimizing financial operations, and contributing to economic growth and stability."

Regarding the Petitioner's professional plan, the Director discussed this evidence and concluded that it did not establish that the Petitioner's business has a significant potential to employ U.S. workers, that it will operate in an economically depressed area,[5] or that it would otherwise reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. The Petitioner does not specifically address or contest these conclusions on appeal.

The record supports the Director's conclusion that the record lacks evidence that the proposed endeavor's future staffing levels and business activity would provide substantial economic benefits in Florida or in the United States, or that it otherwise has broader national implications within the field. The professional plan is very limited and does not include a marketing strategy, staffing or personnel projections, or any financial projections. Without this evidence, we cannot evaluate the proposed endeavor's impact on job creation or its overall economic impact. As such, the Petitioner has not supported a claim that her proposed endeavor is likely to, for example, introduce innovations that may have broader implications in the tax or business law field.

[5] As the Director noted, the professional plan does not specifically state that her proposed endeavor will be headquartered in Florida or will target Florida.

Although the professional plan indicates that the Petitioner's business seeks to help small and medium-sized U.S. firms and individuals improve operations and achieve better productivity and profitability levels, 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. *Id*. at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her customers to impact the tax or business law field, or the international trade sector, at a level commensurate with national importance.

On appeal, the Petitioner reiterates the importance of the industry or profession, and her role as a lawyer and tax law specialist within the proposed company; however, these factors do not sufficiently establish the national importance of the proposed endeavor. The Petitioner likewise reiterates her professional experience and abilities. While important, the Petitioner's expertise acquired through her employment relates 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 the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong.

Further, regarding the advisory opinion letter, in addressing the first prong of the *Dhanasar* framework, the professor states that the Petitioner's proposed endeavor to provide legal consultancy services to help small and medium-sized U.S. enterprises will result in "generating revenues within the country," "creating employment opportunities," and "increasing tax revenues to the federal and state governments," and "will broadly enhance societal welfare." However, the professor, does not discuss the Petitioner's professional plan and does not address its prospective substantial economic impact. Nor does the professor discuss the implications of the proposed endeavor on the larger field of legal consulting. For example, the professor has not offered sufficient evidence that the Petitioner's legal consulting services through her company would employ a significant population of workers in an economically depressed area, or that her endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id*., *see also Matter of D-R-,* 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter is lacking in relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

Moreover, we acknowledge that the aforementioned recommendation letters detail the Petitioner's effectiveness and skills in her previous work in Colombia as a lawyer specializing in tax and finance, but they do not address the national importance of her proposed endeavor.

In light of the above conclusions, the Petitioner has not met her burden of proof to establish that she meets the first prong of the *Dhanasar* national interest framework. Although the Director also concluded that the Petitioner had not established her eligibility under the second and third prongs of the *Dhanasar* framework, detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion.[6]

III. CONCLUSION

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

ORDER: The appeal is dismissed.

[6] *See Bagamasbad*, 429 U.S. at 25-26; *see also L-A-C-*, 26 I&N Dec. at 516, n.7.