U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23791748

Date: FEB. 2, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification, 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 did not qualify for the EB-2 classification, and 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.

On appeal, the Petitioner submits a brief asserting that she is eligible for the EB-2 classification and for a national interest waiver. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or [individuals] of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or

> educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an [individual's] services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.

II. ANALYSIS

As a preliminary matter, the Petitioner alleges on appeal that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to [her] detriment." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe, 25 I&N Dec. at 375 (AAO 2010); see also Matter of Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965).* Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual.* While the Petitioner asserts on appeal that she has provided evidence sufficient to demonstrate her eligibility for the EB-2 classification and a national interest waiver, she does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

A. EB-2 Classification

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. The Director concluded that the Petitioner did not meet EB-2 classification eligibility through either avenue. On appeal, the Petitioner asserts that she is eligible for the EB-2 classification as a member of the professions holding an advanced degree.

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[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *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).

In order to show that a Petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). On appeal, the Petitioner does not assert nor the does record show that she possesses a United States advanced degree or a foreign equivalent degree. *Id.*

Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B). The Director denied the petition in part, determining that the Petitioner did not have the requisite degree and work experience for eligibility through this regulation. Based on our de novo review of the record, we withdraw the Director's determination and conclude that she qualifies for the EB-2 classification as an advanced degreed professional under this alternative regulatory path. *Id.*

The Petitioner initially presented a copy of her college diploma and academic course transcripts showing that she obtained a bachelor's degree in mathematics from the Universidade [redacted] in 1998. In response to the Director's request for evidence (RFE) she submitted an education credential evaluation in which the evaluator solely considered this degree and determined that it was equivalent to a U.S. bachelor's degree in mathematics. Based on this evidence, we conclude that she possesses the foreign degree equivalent of a U.S. bachelor's degree.

Collectively considering other evidence in the record we also determine that she gained at least five years of progressive experience in the specialty after obtaining this degree. According to the letters from her former employers, the Petitioner worked for different entities owned by the same multinational conglomerate in Brazil from 1998 until 2017 when she entered the United States as a nonimmigrant. The authors discussed how she was employed in successively more responsible positions during this timeframe which carried job titles such as project manager, deputy manager, assistant vice president, vice president, and director. Her employment in these roles is supported by copies of her tax documentation for several of those years, internal company news bulletins which reference her employment in various positions, and other contemporaneous evidence of her employment.

The record also contains a letter from an official of B-, a bank located in Florida, who confirms that the Petitioner was employed from April 2018 through at least January 2019 (when the petition was filed), first as a product and project manager, and then as the bank's vice president of [redacted] solutions. Here, the evidence in the record indicates more likely than not, that the Petitioner possessed the requisite post-baccalaureate progressive work experience at the time of filing this petition. *Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner has shown her eligibility for the EB-2 classification under 8 C.F.R. § 204.5(k)(3)(i)(B). While she also maintains on appeal that she qualifies as an individual of exceptional ability, her assertions regarding her eligibility as an individual possessing exceptional ability are moot.

B. National Interest Waiver

The remaining issue to be determined 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework. The Petitioner initially provided statements about her proposed endeavor indicating:

> I intend to continue my career in the United States as a Financial Operations Director [i]n the fields of wealth management, credit risk management, credit risk management, and fund administration. I will not only expand the global reach of all companies that hire me, but I will also enhance the financial capabilities, profitability, and customer portfolio of all organizations that require my expert services.

To further illustrate the nature of her proposed endeavor, she provided her job offer letter from B-, the bank in Florida that hired her in 2018. She also offered a list of U.S. companies that she intended to seek employment with, for positions with job titles such as manager, director, and senior manager.

The Director asked for more information and evidence to establish the national importance of the proposed endeavor in the RFE. In response, the Petitioner submitted a statement indicating that instead of working for a U.S. employer, she will alternatively focus her endeavor on the operation of L-, a "management consulting company that will specialize in providing comprehensive consulting services to financial institutions such as international banks, local small and midsized banks, financial advisory companies, and Registered Investment Advisory (RIA) companies." L- was established in Florida in [redacted] 2021 - a year and half after the filing of petition. The Petitioner asserts that she wholly owns L-, a company that "will operate as a consultancy business dedicated to formulating strategies aimed at improving the services offered to international, mostly Brazilian investors, through the private banking and wealth management sector in the United States."

The Petitioner submitted L-'s business plan which states she will be the director of operations for the organization, and "will oversee all business activities to ensure they yield the desired result and are consistent with the [c]ompany's objectives. . . . She will recruit and hire employees, [implement] procedures and guidelines, and ensure that each project deadline is met. . . . She will offer [clients] an independent view of the business considering the consumers' best interests and [develop] solutions based on socially responsible practices and investments."

The Petitioner's initial description of the proposed endeavor did not include plans to form such a company; instead, the Petitioner initially indicated that she would work as a financial operations director who will benefit the nation through her employment with established U.S. companies. We conclude her RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see* also *Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). Here, the Petitioner's plans to establish a new company and perform services as a director of operations for this entity - presented after the filing date cannot retroactively establish eligibility. A petitioner may not make

material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

It appears the Petitioner sought to address the Director's concerns regarding what organization would utilize her financial operations expertise and how her services as a financial operations director would rise to the level of national importance. But in doing so she has significantly changed her proposed endeavor. Notably, the Petitioner does not adequately explain how she would allocate her time between performing services while employed by a U.S. company (which was her initially stated endeavor), and her proposed activities newly presented in the RFE response and reiterated on appeal, such as providing administrative and managerial oversight of her own business. Accordingly, we conclude that the focus of her endeavor has materially changed. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. § 103.2(b)(1). For these reasons, the petition may not be approved.

Moreover, even if the Petitioner had presented her plans to establish and operate her own business at the time of filing, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of this endeavor under the first prong of the *Dhanasar* analytical framework. The Petitioner provided information about her new endeavor indicating that L- will, among other things, "offer quality business consulting, project management, and operational review and analyses services to [clients] in the U.S." In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of her particular proposed endeavor, as the Petitioner's evidence did not show that her proposed work through the operation and management of L- would have broader implications at a level indicative of national importance.

On appeal, the Petitioner asserts that her endeavor "is national in scope, and will broadly impact the nation, produce significant national benefits, due to the ripple effect of her professional activities." However, in addressing national importance in the first prong of the framework, *Dhanasar* sets out that the focus is on the specific endeavor being proposed. As such, we do not consider the indirect consequences of a petitioner's activity when determining whether it is of national importance. We conclude that the Petitioner has not provided evidence sufficient to support her assertion that her work as a financial operations director for one or more U.S. employers, or alternatively as a director of operations for her own consultancy firm, would have substantially positive effects or would otherwise have broader implications beyond those employers or her own business.

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. Although the Petitioner's statements reflect her intention to operate a business that will provide valuable financial services to her clients, she has not offered sufficient 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. For example, the business plan provides a generic five-year forecast for the hiring of employees and the revenue volumes that the entity expects

to generate during this time period, but the business plan does not sufficiently address when L- will commence doing business. The plan forecasts that it will generate revenues exceeding $205,000 in its first year of operation, which will steadily climb each year to reach revenues of over $450,000 by the end of its fifth year of operation. The Petitioner estimates her business will create at least 4 jobs within this five-year timeframe, including *her own job* as the entity's director of operations. However, the plan does not sufficiently detail the basis for its revenue and staffing projections, nor does it adequately explain how these projections will be realized.

The Petitioner has also not demonstrated that her company's future staffing levels would provide substantial economic benefits in Florida or the United States. While the Petitioner asserts that L- will hire 3 U.S. employees within five years, she has not offered sufficient evidence that the area where the company operates is 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 business activity. Without sufficient evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *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 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.