U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22678627

Date: JAN. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business development director, 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 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 although the record established that the Petitioner qualified for classification as a member of the professions holding an advanced degree, he 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. 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 aliens 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 alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, 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 noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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.[3]

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. In denying the petition, the Director determined that the record did not satisfy any of the three prongs set forth in the *Dhanasar* analytical framework. For the reasons discussed below, we concur with the Director's determination that the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The Petitioner stated that she intends to continue her career in the United States as a business development director. According to her professional plan and statement, she will "advise U.S. companies on how to properly plan, direct, and coordinate their business operations for optimal business development in the U.S., Brazil, and Latin America." She further stated that she will "contribute significantly to the corporate sector, helping U.S. businesses improve their strategies and practices." She indicated that she will help U.S. companies seize new market and investment

[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*, 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).

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

opportunities, and noted that the endeavor will potentially impact the United States in the following ways:

- Facilitate cross-border transactions in terms of business development, product or service sales, negotiations and projects in the US, Brazil, and Latin America;
- Strategically manage and secure contracts and partnerships for U.S. companies;
- Optimize company sales, product, and business operational effectiveness, efficiency, profitability and compliance with laws and industry regulations; and
- Generate U.S. tax revenue and create American jobs.

The Petitioner also submitted opinion letters and industry articles and reports in support of her eligibility for a national interest waiver.

The Director issued a request for evidence (RFE) asking the Petitioner to provide a detailed description of the proposed endeavor and why it has substantial merit and is of national importance. In response, the Petitioner supplemented the record with an updated statement and a business plan for her proposed U.S. company, identified as "The Company," which she states will be engaged in business process improvement (BPI) and business process management. According to her plan, her company will offer BPI services to U.S. clients by developing a comprehensive business strategy that will ensure efficient operations and maximum sales. The Petitioner further indicated that her company will offer high quality innovative solutions targeting a wide array of different companies, and will primarily target call centers, specifically debt collection call centers. The Petitioner also stated that the company would provide a variety of IT management consulting services including implementing software and establishing online operations.

In the decision denying the petition, the Director determined that the Petitioner had not demonstrated that her endeavor had substantial merit or was of national importance. Regarding the substantial merit of the endeavor, the Director noted inconsistencies in the Petitioner's claims and evidence pertaining to the exact nature of the proposed endeavor, which precluded a determination that the endeavor had substantial merit in an area such as business, entrepreneurialism, science, technology, culture, health, education, the art, or social sciences. Regarding the national importance of her endeavor, the Director concluded that the Petitioner had not demonstrated that her undertaking would have broader implications on a national or global scale, or have substantial positive effects, particularly in an economically depressed area. The Director noted that based on the Petitioner's claims, her endeavor would be restricted to one company, and that she had not specifically articulated the nature of her company's work or whether her work through her proposed company would rise to a level of national importance.

On appeal, the Petitioner asserts that she has established, by a preponderance of the evidence, the substantial merit and national importance of her work, and that the Director's decision was in error because it "applied a stricter standard" of proof. With respect to the standard of proof in this matter, a petitioner must establish that he meets 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 he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met her burden under the preponderance standard, USCIS considers 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).

The Petitioner also argues on appeal that contrary to the Director's determination, the impacts of her contributions are not limited to her proposed company. She asserts that she will lead teams to execute business development projects in a variety of areas including sales, project, product, and vendor management, and that her ability to manage and direct such projects will substantially enhance the U.S. economy. She also asserts that her professional network in Latin America will allow her to identify viable opportunities for business development via cross-border contracts, and thus demonstrates the substantial merit of her endeavor as it will have a widespread prospective impact on the U.S. business industry and economy.

Regarding the substantial merit of her proposed endeavor, we agree with the Director's determination that the nature of the proposed endeavor is unclear. The Petitioner identifies her proposed endeavor as providing business consulting services to U.S. clients and companies, but indicates that such services encompass a variety of areas, including IT marketing services, the targeting and possible acquisition of debt collection call centers, and the execution of cross-border contracts. She also proposes to establish her own company through which to provide business consulting services. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has both substantial merit and national importance because the Petitioner's proposed endeavor has not been clearly defined. The Petitioner has not submitted persuasive evidence to support a finding of substantial merit. The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish her eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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 highlighted her past successes in Brazil in order to suggest that her proposed endeavor in the field of business consulting will have a similar impact, and asserts that her past experience and expertise will allow her to develop and maintain new clients and relationships which will ultimately increase the flow of money into the U.S. on a national level and increase the gross domestic product (GDP). While we acknowledge these claims, the record does not contain sufficient evidence to substantiate them. For instance, the Petitioner has not demonstrated how her proposed projects will be on such a scale as to impact the national economy directly or indirectly. Similarly, she has not explained how her endeavor will create a revenue stream so substantial as to affect the GDP or tax revenue. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

To further evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. While the Petitioner's statements reflect her intention to provide valuable consulting and project management services for her future clients, 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. Specifically, she has not provided data showing sales or income projections to demonstrate that her proposed consulting activities stand to provide substantial economic benefits in any particular region (such as Florida) or in the United States. While the Petitioner claimed that her business development services will allow U.S. companies to expand into foreign markets and that she can secure their success, she has not provided details concerning how she would do this nor has she identified any U.S. clients or companies seeking business in Brazil or Latin America. Without sufficient information or 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 U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See id.* at 890.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. *Id.* For instance, she has not offered evidence in the form of projected staffing levels or hiring plans to demonstrate that her proposed company would employ a significant population of workers in an economically depressed area or that her endeavor would offer a U.S. region or its population a substantial economic benefit through employment levels or business activity. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Additionally, the Petitioner repeatedly references her experience, education, and knowledge concerning business and marketing as the reason she will be able to provide these benefits to the United States, and points to recommendation letters attesting to her background and qualifications. However, the Petitioner's personal and professional qualifications relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar's* first prong.

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. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.