U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23102688

Date: JULY 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an attorney who seeks to work in California as a registered foreign legal consultant, 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. Instead, 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 regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking a national interest waiver must submit, in duplicate, the uncertified employer-specific parts of a labor certification – either Form ETA-750B, Statement of Qualifications of Alien, or the corresponding sections J, K, and L of its successor form, ETA Form 9089, Application for Permanent Employment Certification. *See generally* 6 *USCIS Policy Manual* F.5(D), https://www.uscis.gov/policy-manual.

In a request for evidence (RFE), the Director observed that the Petitioner did not submit either form with the petition. In response, the Petitioner stated that she would not submit either form because she has no intending U.S. employer.

The Petitioner seeks a waiver of the job offer requirement, and therefore need not submit a *complete* Form ETA-750 or ETA Form 9089 that has been certified by the Department of Labor. But the uncertified *partial* forms specified in the RFE do not relate to a specific U.S. job offer; rather, they list an individual's credentials and experience. The regulations require the submission of the specified partial forms as part of the process of applying for the national interest waiver. Because the Petitioner did not submit required documentation, she has not submitted a complete waiver application.

Beyond the above procedural issue, the Director addressed the merits of the waiver application, which we will discuss here.

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 earned a law degree in [redacted], England, in 1986, and is authorized to practice law in England and Wales. The Petitioner stated: "A Registered Foreign Legal Consultant may practice the law of his or her country in California but may not practice Californian law." Documents submitted with the petition show that the Petitioner had begun the process of registration in California, but they do not show that she had completed that process at the time she filed the petition in August 2021. The Petitioner stated her intention to "contribut[e] to the work [of the] Californian Legal Community," and

submitted two reference letters from 1996 regarding her prior employment as an attorney in England, but did not provide specific details about her proposed endeavor in the United States.

The Director requested further information to describe the proposed endeavor, and evidence to establish that the proposed endeavor meets the various requirements outlined in *Dhanasar*. In response, the Petitioner stated:

> I would like to continue and extend my work in Private International Law/Conflicts of Law to the State of California. . . .
>
> . . . .
>
> A conflict of law can be substantive (the actual law) or procedural (the system that upholds or applies the law). A conflict of law often arise[s] during cross border transactions such as;
>
> - buying and selling property in a different jurisdiction
> - international marriage contracts
> - business immigration
> - cross border employment
> - trade agreements
> - choice of jurisdiction (which court and in which country should apply to a particular dispute).

The Petitioner essentially described her area of intended practice, but she did not explain how her proposed endeavor has substantial merit and national importance. The rest of the Petitioner's response to the RFE concerned her past experience, her qualifications to practice law, and California's requirements for registration as a foreign legal consultant.

The Director denied the petition, stating that, because the Petitioner had not submitted "a specific and well-detailed description of the proposed endeavor," she had not shown the substantial merit and national importance of the proposed endeavor. The Director stated that *Dhanasar* requires "broader implications" from an individual's work, such as significant employment creation or advances in a particular field. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

On appeal, the Petitioner asserts:

> My application is consistent with and not contrary to the United States Constitution and United States Federal law. The 'Foreign legal Consultant Programme' is a State Bar of California Programme and its practical working and success in part depends upon the support and application of Federal laws, rules and regulations. In my case this would mean a decision in my favour.

The Petitioner seeks an EB-2 immigrant classification which, by law, typically requires a job offer and a labor certification. The burden is on the Petitioner to establish that it would be in the national interest to grant her an exception from that requirement. The assertion that her "application is consistent with

and not contrary to the United States Constitution and United States Federal law" is not sufficient to meet this burden. The *Dhanasar* requirements go beyond compliance with federal law.

In a separate statement, the Petitioner states:

> I Appeal the decision of the USCIS on the grounds that;
>
> 1. The case law is helpful in the decision making process and for the purpose of guidance.
> 2. The case law does not negate the facts of my application which are supported by evidence.
> 3. The case law does not negate the evidence that I have provided which satisfies the burden of proof required for a successful application.

The Petitioner does not elaborate on the above points. It cannot suffice for the Petitioner to *assert* that her "evidence . . . satisfies the burden of proof." She must show *how* it satisfies that burden. Here, she has not done so. The intention to seek registration as a foreign legal consultant is not, on its face, sufficient grounds for granting a national interest waiver, because foreign legal consultants are typically subject to the statutory job offer requirement. The Petitioner must explain how her proposed endeavor in that occupation meets the *Dhanasar* requirements.

The Petitioner repeats her earlier statement that she intends "to provide regulated legal advice and assistance on the law of England and Wales to the Californian Legal Community. This advice would address cross border legal disputes," which "in turn will contribute to the United States community through the flow of interstate commerce." In this way, the Petitioner appears to assert that her work will have the "broader implications" contemplated by *Dhanasar*, but she does not specify how her legal advice will have implications beyond benefit to individual clients. Those clients may participate in interstate commerce, but the Petitioner has not met her burden of proof to show that those benefits will be significant at a broader level.

After filing the appeal, the Petitioner has submitted new evidence indicating that she has been authorized to practice law in France. The Petitioner does not explain how this information is relevant to the appeal or the underlying petition. Furthermore, the French legal authority granted this authorization in December 2022, more than a year after the Petitioner filed the petition in August 2021 and nine months after the Director denied the petition. A petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). The Petitioner does not explain how this December 2022 authorization relates to her eligibility at the time she filed the petition.

In light of the above conclusions, the Petitioner has not met her burden of proof to show that she satisfies the first prong of the *Dhanasar* national interest test. Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.[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 substantial merit and national importance of 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.