U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27490266

Date: JUN. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a tax attorney, 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Petitioner did not qualify for classification as a member of the professions holding an advanced degree and 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. Section 203(b)(2)(B)(i) of the Act.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree

> or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the [noncitizen] must have a United States doctorate or a foreign equivalent degree.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they 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. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that 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
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show an individual is a professional holding an 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). Alternatively, the 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 determined that "the evidence does not establish that the [B]eneficiary is an individual with an advanced degree" without providing any reason or analysis.[2]

Upon de novo review, we withdraw the Director's finding that the Petitioner does not qualify as a member of the professions holding an advanced degree. Here, the Petitioner submitted copies of official academic records establishing that she possesses a bachelor's degree in law and a bachelor's degree in accounting from a Brazilian university. The Petitioner also provided an evaluation of her education prepared by a credentials evaluator.

Because the Petitioner does not possess a U.S. academic or professional degree or foreign equivalent above that of a bachelor's degree, she must provide, in the alternative, evidence of a bachelor's degree or its foreign equivalent and "evidence in the form of letters from current or former employer(s)" showing five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B). Here, the Petitioner provided sufficient evidence to meet this requirement. She provided employment affidavits and a letter from her former employer, [redacted] 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).

[2] An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denial to allow the respondent a meaningful opportunity to challenge the determination on appeal).

[redacted] documenting her employment as a tax and corporate lawyer in the firm from July 2012 to February 2018. Accordingly, the record as presently constituted contains sufficient evidence to demonstrate that the Petitioner is eligible for classification as a member of the professions holding an advanced degree. The Director's finding to the contrary is withdrawn.

B. National Interest Waiver

The remaining issue is whether the Petitioner established that a waiver of the required job offer would be in the national interest. Although the Director found substantial merit in the proposed endeavor and that the Petitioner was well-positioned to advance the proposed endeavor, the Director concluded that the record did not establish that the Petitioner's endeavor has national importance. The Director also concluded that the record did not satisfy the third *Dhanasar* prong. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The first prong of the *Dhanasar* framework, 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.

According to the Petitioner's resume, she worked in Brazil as a lawyer and law partner, specializing in tax law, from 2012-2018. With respect to her proposed endeavor, the Petitioner indicated that she intends to establish her own company, [redacted] to provide tax consulting and legal services to clients. Specifically, she stated that as a tax expert, her service will include:

> [S]trategizing with clients to minimize tax liability, communicating with clients to explain tax issues, updating client about tax laws and practices, keeping clients compliant with their tax obligations, planning, structuring the affairs of clients to minimize tax liability, making complicated computations, preparing various documents and records, researching and analyzing tax legislation on a frequent basis and updating when required, meeting with clients to help them understand that changing legislation, working with revenue provisions, meeting and negotiating with HM Revenue and Customs if someone attempts to file their tax returns for his or her company, guide and monitor clients and design strategies to reduce tax liability by appropriate investments, recommend suitable approaches to companies and individuals to reduce all tax related obligations. [T]ax advisors develop data for company policies, prepare reports for tax returns and execute changes in policies, prepare audit reports by synchronizing with internal audit tax team, ensure compliance to all company policies and are responsible for all transactions within and outside the company, draft a structured concise letter for conveying the update to different clients.

She further stated that her company will assist companies that have branch offices in Brazil or are planning to expand in the Brazilian consumer market. Additionally, she highlighted her expertise in Brazilian tax law and claimed that her services will provide valuable assistance specifically tailored to her clients seeking a greater understanding of Brazilian tax laws and its implications.

According to a submitted business plan, the Petitioner's company will offer tax consulting services to U.S. businesses and individuals seeking to maintain assets and/or income in Brazil. The business plan indicates that the company will employ a managing partner (the Petitioner), a legal department head, and ten tax specialists within its first three years of operations. The included financial projections estimate that the company will earn a net profit in excess of $800,000 by its fifth year of operations. The business plan states that the company will be headquartered in [redacted] Florida, and will initially target the Metro-West and International areas of the city, but also indicates that the company may consider expanding its target areas to include [redacted]

The Petitioner's initial evidence also included a letter from [redacted] Associate Teaching Professor of Law at [redacted] School of Law. The letter provides background information regarding international tax regulations, tax consultation, and legal services in the context of international markets, Brazil in particular. It also recites the Petitioner's qualifications and generally explains why the professional services of international tax consultants and legal specialists are beneficial to businesses and emphasizes the increasing demand for experts in the Brazilian commercial sector. The writer concludes that "the United States has an opportunity to directly benefit from [the Petitioner's] intimate and first-rate knowledge of the legal landscape, as well as her expertise in unique skills in the field of tax law. Allowing her to reside in the united states can substantially benefit the nation in terms of economic activity comma job creation comma and tax revenue."

In response to the Director's request for evidence (RFE), the Petitioner resubmitted her company's business plan and provided an updated statement, where she maintained that through her company, she would provide tax, accounting, and tax law services that will help American clients "regularize their tax status with the Brazilian IRS." She further explained that her goal was to "provide an excellent service to companies, American citizens, and foreigners in the USA who still have obligations with the Brazilian Federal Revenue Service."

The record includes information about accounting, tax law, tax preparation, and legal services. In addition, the Petitioner referenced statistics regarding the occupation of tax preparer from O*Net OnLine, noting that "around 13,000 annual vacancies for workers in this profession by 2031 in the US will be needed to supply the market; in Florida, that number will be 1,100 by 2030." The Petitioner also referenced an industry report, noting that the US tax preparation services market was estimated at $11.9 billion in 2022 and is projected to reach a projected market size of $12.6 billion by 2027.

In the decision denying the petition, the Director acknowledged the Petitioner's business plan for her company but determined that she had not established the national importance of her specific proposed endeavor. The Director stated that the Petitioner had not shown that her undertaking stands to have broader implications for the field or otherwise offers "potential prospective impact" beyond her own company.

In her appeal brief, the Petitioner asserts that her business plan demonstrates a significant potential impact. She claims that contrary to the Director's determination, her company will offer positive impacts in economically depressed areas and has the potential to employ U.S. workers. She again cites to the importance of tax preparation and the potential shortage of such workers in the coming years; however, we are not persuaded by the Petitioner's claim that her proposed endeavor has national importance due to the shortage of tax preparers. Here, the Petitioner has not established that her proposed endeavor stands

to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner also contends that her proposed endeavor is of national importance due to her professional history and past achievements. She points to her knowledge and experience in tax and corporate law and the various positions she held while working in Brazil. The Petitioner's claims relating to her knowledge and record of success in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

In addition, the Petitioner asserts that her undertaking offers national implications in the field of tax preparation and significant potential to employ U.S. workers. She further argues that her proposed work will contribute toward the advancement of individuals and U.S. businesses looking to manage their Brazilian assets and/or income. The Petitioner also claims that her proposed endeavor stands to assist her clients through minimizing tax liabilities, reducing the cost of tax compliance, solving problematic situations and incidents, and providing proper legal advice and consulting in various scenarios, particularly as it pertains to the Brazilian market. Furthermore, she contends that her undertaking will impact the international population of [redacted] Florida.

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 id.* 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.

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. While the Petitioner's statements reflect her intention to provide valuable tax preparation and legal services to her 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. 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 conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her own company or clientele to impact her field or the U.S. economy more broadly at a level commensurate with national importance.

We acknowledge the advisory opinion letter from the [redacted] a letter that primarily addresses the importance of the Petitioner's industry and profession by generally explaining why tax experts and legal consultants are beneficial to U.S. businesses, particularly those engaged in business in Brazil. Much of the content of the letter is lacking relevance because it discusses the importance of the Petitioner's industry and occupation rather than addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the *Dhanasar* framework. The

writer offers little analysis of the proposed endeavor and its prospective substantial economic impact and does not otherwise address the implications of the proposed endeavor on the larger field of tax or legal consulting. Her statements about the occupation or the field in general do not establish how the specific proposed endeavor stands to impact the broader field or otherwise establish its national importance.

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).

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. We note her assertion that she intends to have 12 individuals employed by her company by the third year of operation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, however, the record does not show that benefits to the regional or national economy resulting from the Petitioner's tax or legal projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Dhanasar*, 26 I&N Dec. at 890.

We have considered the business plan but conclude that it does not demonstrate that the company's future staffing levels and tax consulting activity would provide substantial economic benefits in Florida or the United States. Although the business plan reflects that the company will hire several workers, the record does not contain sufficient evidence to reflect that the area where it will operate is economically depressed, that it would employ a significant population of workers in the area, or that the specific proposed endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue. The fact that the Petitioner's company will create 12 additional jobs in this sector after its third year of operations does not establish that the proposed endeavor will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

Although the business plan mentions the company's consideration of targeting clients in other metro areas of Florida, it does not elaborate on these plans or indicate that it will open additional branches or offices that might extend its impact. The business plan also indicates that the Petitioner's company would offer additional economic benefits including enabling foreign direct investment in new or existing businesses, and increased efficiency and cost reduction for clients that use its services. Although the proposed endeavor may benefit the client companies that engage the Petitioner's company, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *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.