U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26387957

Date: MAR. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in supply chain management, seeks second preference 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. 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 the Petitioner had not established 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. 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. *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
- On balance, waiving the job offer requirement would benefit the United States.

[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).

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined 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 first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

> I seek employment as an independent business owner in the field of supply chain management (SCM) and logistics, serving clients and customers across the US. Modern supply chains are the engines that drive advances in the design, manufacture, and distribution of products and services, spurring economic growth.
>
> . . . .
>
> I will be able to develop efficient approaches to the supply chain which will allow enhancing resilience in SCM and Logistics via a 360-degree approach to provide comprehensive, compatible, and affordable solutions, optimize inventory turns and portfolio management, decrease the level of potential out of stocks and create employment opportunities . . . .

In response to the Director's request for evidence (RFE), the Petitioner claimed:

> [The Petitioner] is seeking employment in the United States of America as Entrepreneur in the field of Trucking. In the United States, Trucking is a significant source of economic growth. Trucking continues to be critical to the United States, as its health has a significant impact on the US economy in various ways.
>
> . . . .
>
> By carrying out the [the Petitioner's] proposed endeavor of being an independent business owner in the field of Trucking in the United States, the [Petitioner] will help contribute to the country's economy. Through the execution of her proposed endeavor, the [Petitioner] will directly help create additional jobs for American workers, a clear and substantive impact that speaks to the national importance of said endeavor. In addition, by contributing to the growth of the American economy, the [Petitioner] will contribute significantly to the societal welfare of American citizens. Furthermore, the [Petitioner's] work is clearly and directly related to a number of government initiatives, programs, and departments, all of which indicate that the company's work improves the quality of these American households and is therefore of national importance and will be in the field of substantial merit.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner states she "will continue to promote her business,

[redacted] contributing to the supply chain markets in the United States." Although she initially claimed to "seek employment as an independent business owner in the field of [SCM] and logistics," the Petitioner did not allege operating a trucking company. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). In fact, the Petitioner's documentation in response to the Director's RFE, such as [redacted] business plan, licensing and financial evidence, and intended partnership agreements, reflects dates after the issuance of the Director's RFE.[2] A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of creating and operating [redacted]

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner initially discussed the importance of developing efficient approaches to the supply chain, the Petitioner must demonstrate the national importance of her specific, proposed endeavor rather than the importance of SCM and logistics. In *Dhanasar*, we 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.

In addition, while the Petitioner stressed "14 years of outstanding professional experience," the Petitioner's experience and abilities in her field relate 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 that she proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, 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. The Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of continuing her work as an entrepreneur in SCM and logistics 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, the record does not show through supporting documentation how her entrepreneurship stands to sufficiently extend beyond her own company or with other companies conducting business with the Petitioner, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

[2] The Petitioner's RFE statement reflects that "[a]s of June 2022 I am directing the operation of the [redacted] company . . . ."; the Director issued the RFE in May 2022.

Finally, the Petitioner did not establish that her initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show any benefits to the U.S. regional or national economy resulting from being an independent business owner 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.[3]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility 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.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).