U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25692774

Date: MAR. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources manager, 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 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 record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Director did not apply the preponderance of the evidence standard in adjudicating her petition, disregarded the expert opinion letters, and disregarded the regulation contained in 20 C.F.R. § 656.3, making it legally impossible for an entrepreneur to file a labor certification on his or her own behalf.

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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates that:

- 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 Petitioner proposed to work in the United States as a human resources manager through her company, [redacted], which was formed in Florida in 2018. She previously worked as an event coordinator and a human resources specialist at a luxury French restaurant in Florida from August 2018 to July 2019. The Petitioner holds a master of arts degree in human resource management from [redacted] University in Florida. The Director determined that the Petitioner is eligible for the EB-2 visa classification as a member of the professions holding an advanced degree, and we agree. The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification's job offer requirement. We conclude that she is not.

The first prong of the *Dhanasar* analytical framework, 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner's proposed endeavor has substantial merit but has no national importance. The Petitioner stated that her goal is to use her experience and knowledge to provide human resources consulting services to new and small businesses to hire and retain the best suited employees to carry out and expand their businesses and that through her work, she intends to make major contributions to the human resources industry and to the U.S. economy. Based on her goal and intent, we agree with the Director's determination that the Petitioner's proposed endeavor has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[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).

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 addition, we indicated 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. The Petitioner is listed as the registered agent and a manager of [redacted], which was formed in Florida in [redacted] 2018. The Petitioner claimed that she has provided services to different companies and individuals, including [redacted] since April 2020. The Petitioner further stated that [redacted] has retained her services to handle their VIP customers, including hiring the personnel who will directly handle the company's more valuable customers. However, the record does not contain sufficient corroborating evidence. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the Petitioner claims that her proposed endeavor to work as a human resources consultant through her company is of national importance because it has "a significant potential to employ U.S. workers and substantial positive effects." While we acknowledge the Petitioner's claims, she has not provided sufficient evidence to substantiate them. She has not identified any specific human resources consulting engagements for which the Petitioner plans to offer services nor has she offered evidence of a direct connection between her human resources consulting services and a boost in her client's product or services sales. As such, she has not demonstrated that any of those potential sales are of such a magnitude as to affect a particular industry, jobs, or the U.S. economy. Further, the Petitioner has not shown that the benefits to the regional or national economy resulting from her human resources consulting work would reach the level of substantial positive effects. The record does not establish that her human resources consulting business would be of a size or income level that would suggest the ability to generate substantial positive economic effects. Without sufficient documentary evidence that her proposed job duties as a human resources manager at her company would impact the human resources industry more broadly rather than benefiting her clients and their customers, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The Petitioner submitted an expert opinion letter from [redacted], a professor of marketing management at [redacted] University. Professor [redacted] states that the Petitioner, as a human resources consultant for her company, will create further employment opportunities and qualify a number of individuals to work in their distinct industries, providing them with the knowledge and skills needed, consequently benefiting the wider U.S. economy. The Petitioner also submitted an expert opinion letter from [redacted], a professor of marketing at [redacted] State University. Professor [redacted] states that human resource management involves creating work, assessing human resource concepts, recruiting potential employees, job training, and career advance and that in this context, it benefits the nation's overall labor market, economy, and business industry. Professor [redacted] further

states that the Petitioner will use her experience in human resources and change management to help small and medium-sized enterprises in the United States improve operations and achieve better productivity and profitability levels, thereby generating revenues within the country and creating employment opportunities.

The input of any professionals in the relevant field or industry is respected and valuable in assessing a claim of a national interest waiver. However, the expert opinion letters do not sufficiently demonstrate that the Petitioner's proposed endeavor has significant potential to employee U.S. workers or otherwise offers "substantial positive economic effects" for our nation contemplated by *Dhanasar*. *Id.* at 890. For example, the professors have not provided any analysis or numerical breakdowns to substantiate how the Petitioner's human resources consulting would benefit the nation's labor market, economy, and business industry. The professors have not offered sufficient evidence that the Petitioner's human resources consulting services through her company would enable her client to employ a significant population of workers in an economically depressed area or that her endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Nor have the professors demonstrated that any increase in the client's revenue attributable to the Petitioner's human resources consulting services stands to substantially affect economic activity regionally or nationally. Therefore, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of the first prong of the *Dhanasar* framework.

In addition, the Petitioner submitted a recommendation letter from the owner and co-founder of [redacted] in Florida. The letter states that in 2018, the club used the Petitioner's services to create a business plan for a new line of business for the club and that the Petitioner had a short term to complete the work, but she delivered a high-quality final product. The Petitioner also submitted a recommendation letter from a former general manager of [redacted] which states that the Petitioner worked for the restaurant from 2018 to 2019 as an event coordinator and a human resources specialist. The letter further states that the Petitioner played an important role in hiring the right personnel for events and in ensuring that all the required paperwork was in compliance with the pertinent regulation. While these letters demonstrate the Petitioner's past work experience and contributions to her former client and employer, they do not support that her proposed endeavor to work as a human resources consultant through her company has "a significant potential to employ U.S. workers" or "substantial positive effects" as claimed by the Petitioner.

Furthermore, to support the claim that her profession and proposed endeavor are of national importance, the Petitioner submitted two articles. The first article titled "The State of Small Business in America 2016" states that small businesses have the power to transform America because small business owners apply their extraordinary potential to spark competition, drive innovation, build communities, and better the quality of life for citizens. The second article titled "The Advantages of Outsourcing HR Functions" provides four main advantages of outsourcing human resources functions: ensure the business is in compliance, improve the employee experience, offer better benefits, and reduce costs. The Petitioner contends that her role as a human resources consultant is critical to enhancing the productivity of companies and the entire industry. While these articles indicate the importance of small businesses in the U.S. economy and highlight the advantages of outsourcing human resources functions for businesses, they do not specifically show how the Petitioner's proposed endeavor to work as a human resources manager would impact the human resources industry more

broadly rather than benefiting her clients and their customers. The record does not sufficiently indicate how providing human resources consulting services to companies and individuals will translate into broader implications in the human resources industry or in the U.S. economy. The Petitioner has not otherwise provided sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rises to the level of national importance.

On appeal, the Petitioner submits two AAO non-precent decisions in which each petitioner had submitted a Form I-140 seeking classification as an individual of extraordinary ability in the business and we sustained the appeal. First, these two petitioners sought an immigrant visa classification as an individual of extraordinary ability (EB-1), which is different from an immigrant visa classification as a member of the professions holding an advanced degree or an individual of exceptional ability (EB-2) sought by the Petitioner in the instant case. Second, neither decision was published as a precedent and, therefore, these decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

Because the documentation in the record does not sufficiently 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.

On appeal, the Petitioner maintains that she meets the second and third prongs of the *Dhansar* framework and submits a decision and order issued by an administrative law judge of the U.S. Department of Labor, affirming the denial of an employer's application for permanent employment certification. The Petitioner also submits 20 C.F.R. § 656, which sets forth labor certification process for permanent employment of noncitizens in the United States, to support her claim that the Director disregarded the regulation contained in 20 C.F.R. § 656.3, making it legally impossible for an entrepreneur to file a labor certification on his or her own behalf. We acknowledge the Petitioner's claims, but since the identified basis for this decision is dispositive of the Petitioner's appeal, we will reserve these issues for future consideration should the need arise.[3]

III. CONCLUSION

Although the Petitioner has shown that she is a member of the professions holding an advanced degree and that her proposed endeavor to work in the United States as a human resources manager through her company has substantial merit, she has not shown that her proposed endeavor is of national importance. Accordingly, the Petitioner has not established by a preponderance of the evidence that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] *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 alternate issues on appeal where an applicant is otherwise ineligible).