U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26745077

Date: MAY 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business analyst, 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 qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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.

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). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, 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.

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

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The record contains inconsistent regarding what the proposed endeavor would entail. Initially, the Petitioner stated that her "proposed endeavor in the United States will be to facilitate the development and execution of U.S. companies' financial and accounting plans, including my own company's future entrepreneurial endeavors." The Petitioner asserted in a letter dated December 7, 2020, that she "intend[s] to continue supporting the financial and operations area to optimize resources through database analysis of each machine and grow professionally" with her employer, [redacted] a subsidiary of "a worldwide quality supplier of replacement Caterpillar and Komatsu parts." The Petitioner stated that she "act[s] as the Assistant Manager/Estimated Manager Assistant" for her employer and that she is "responsible for collecting and analyzing data, in order to estimate the time, money, materials, and labor required to manufacture boxes and labels."

The Petitioner also submitted a business plan, generally dated 2020, for "a new concept of catering service, and event planning, based on a high-quality service and one stop shop solutions for households and corporate clients." The business plan states that it "will focus on household private parties, the 1st largest in the industry, starting with equipment rental, setup preparation and event planning in the [redacted] area." More specifically, the plan states that "[t]he equipment rental will be the main product, followed by event planning and management." The plan further asserts that the company "will hire several jobs and boost the local food supply chain. The company has plans to expand as a franchise with potential to expand to other states." The staff hiring plan section of the business plan indicates that the company will employ three workers—a waitress, a sound and light technician, and a "general staff" position—in the first year; in the second year the company will hire a "CEO," an event planner, and an additional waitress in the second year; and in the third through fifth years the company will hire additional waitresses, sound and light technicians, and "general staff" positions for a total of 29 employees.

In response to the Director's request for evidence (RFE), the Petitioner provided information that directly conflicts with statements submitted in support of the Form I-140, Immigrant Petition for Alien Workers, filed in January 2021. In the RFE response, the Petitioner stated that she "worked for [redacted]

[redacted] serving as an Assistant Manager Estimated Manager Assistant . . . [f]rom February 2020 until December 2020," prior to the petition filing date in 2021, and that [redacted] eventually rehired her as a financial and administrative consultant in July 2022. However, the Petitioner's résumé submitted with the Form I-140 in January 2021 stated that she worked as an "Assistant Manager Estimated Manager Assitant [sic]" for [redacted] "2020-currently." Similarly, the Petitioner's letter dated December 2020, submitted in support of the petition in January 2021, indicated that she was currently employed by [redacted] where she "act[s] as the Assistant Manager/Estimated Manager Assistant." The Petitioner's unresolved inconsistent statements in the record regarding her employment history and current employer, especially because the initial description of the proposed endeavor specified working for that particular employer, casts doubt on the veracity of her statements in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

Relatedly, the Petitioner revised her description of the proposed endeavor in response to the Director's RFE, indicating that her "overall proposed endeavor in the United States is to offer my expertise and use my accounting, business management, business development, financial management, and financial administration skills and knowledge, gained through my professional experience to develop my business . . . providing catering and event planning services," no longer stating that the proposed endeavor entails supporting the financial operations of [redacted]

Despite narrowing the proposed endeavor to operating her own catering and event planning service company in response to the RFE, the Petitioner also submitted letters of intent from multiple companies that appear to be unrelated to the proposed catering and event planning endeavor. The RFE response includes a letter from the manager of [redacted] dated June 2022, confirming his "intent to contract [her] as soon as possible because she has experience in IFRS International Financial Reporting Standards, accounting standards, and financial reports used in most Latin American countries such as Colombia, Mexico, Ecuador, among others." The letter further stated, "Our company expansion needs to hire her services to achieve alliances and bring new investments from Latin America to our company." Likewise, the RFE response contains a letter from the manager of [redacted], dated August 2022, confirming his "intent to work with [the Petitioner] and contract [her] services as a financial advisor to develop a business plan to grow my business." We acknowledge that the record contains a similar, third letter of intent; however, the letter does not clearly indicate the signatory's intent. The record does not reconcile why the Petitioner's catering and event planning endeavor in which "equipment rental will be the main product" with a "focus on household private parties" would involve providing financial consulting services to businesses. Again, the unresolved inconsistent information in the record regarding the nature of the proposed endeavor casts doubt on the veracity of the information in the record. *See Matter of Ho*, 19 I&N Dec. at 591.

The Petitioner also revised her business plan; however, the record contains information that undermines the plausibility of the business plan in the record. The RFE response contains copies of several documents from the State of Florida, Division of Corporations, indicating that the principal address of the Petitioner's catering and event planning company matches the address of the Petitioner's private residence as reported on the Form I-140. The revised business plan indicates that the

Petitioner's company will employ 17—not three—employees in the first year, growing to 98 employees in the fifth year. The record, including both the original and revised business plans and bank statements corresponding to the Petitioner's business, does not provide any address other than the Petitioner's private residence for the Petitioner's business; however, the record does not reconcile how the Petitioner will employ 98 or even 17 workers at her private residence. The original and revised business plans also provide substantially differing wages for positions. In the original plan, sound and light technicians' wages are $37,678; however, in the revised business plan their wages are $72,459. In contrast, waitresses' wages dropped from $64,590 in the original plan to $50,164 in the revised plan. We further note that, although the revised business plan specifically states that the Petitioner "will work as the company's Chief Finance Officer (CFO)," the list of positions provided in the schedule of employees for the company's first five years excludes a CFO position for any of the company's 98 employees, or any of the 29 employees in the initial business plan. The unresolved inconsistent information in the record regarding the number of workers the Petitioner's company will employ—and the implausibility of that number of employees working at the Petitioner's private residence—in addition to the substantially differing wages for positions, and the internally inconsistent statements regarding the Petitioner's own role in her company, cast doubt on the veracity of the business plans specifically, and generally on the information in the record. *See Matter of Ho*, 19 I&N Dec. at 591.

The Director concluded that "the [P]etitioner did not demonstrate that her business will impact the nation at a level commensurate with national importance." The Director noted that the Petitioner's business plan "fails to provide adequate information concerning how they made their projections regarding potential employees, revenue, and costs." The Director observed that "the [P]etitioner has not offered evidence to demonstrate that her undertaking would offer the Florida region or its population a substantial economic benefit through employment levels or foreign direct investment." The Director also concluded that the record "does not demonstrate how the [Petitioner's] specific endeavor stands to affect or advance the broader industry, or that it otherwise has wider implications in the field." The Director noted that, "[a]lthough [the Petitioner] may intend to expand the business, the record does not show that the prospective impact of the specific proposed endeavor has implications beyond the company's clients and employees, rising to the level of national importance." The Director further concluded that, in addition to not satisfying the first *Dhanasar* prong, the record does not satisfy the second and third prongs. *See Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner materially changes her description of her company, referring to it as "a financial and investment consulting and advisory company . . . providing financial advisory, financial planning, strategic business planning, financial product development, catering and events planning services for U.S. businesses and individuals." The Petitioner also repeats information on appeal contained in her revised business plan regarding her company's hiring plan and revenue total expectation for a five-year period, and she asserts that she "will establish her company in Florida, an SBA HUBZone area that will help to fuel small business growth in historically underutilized business zones . . . improving the wages and the working conditions for the U.S. workers, and helping the local community bring investments to the region." The Petitioner further discusses her prior work experience and generalized "submitted [i]ndustry [r]eports and [a]rticles" in the record and she asserts that they establish the proposed endeavor's national importance.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's reference to her company on appeal as a "financial and investment consulting and advisory company," providing financial and investment consulting services in addition to catering and events planning services, presents a new set of facts that cannot establish eligibility. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The nature of the Petitioner's startup company is material to the first *Dhanasar* prong because it addresses the substance of her proposed endeavor, which in turn addresses whether the proposed endeavor may have national importance. *See Dhanasar*, 26 I&N Dec. at 888-89. Because neither the initial nor the revised business plans—or moreover the Petitioner's prior statements in the record—referred to her startup company as a "financial and investment consulting and advisory company," which she described instead as a "catering service, and event planning" company, her description of her company as such presents a new set of material facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Because the Petitioner's reference to her company as a "financial and investment consulting and advisory company" cannot establish eligibility, we need not address the Petitioner's statements regarding her company as such further.

We next note that the Petitioner's reference on appeal to the information in her revised business plan regarding her company's hiring plan and revenue total expectation for a five-year period bears minimal probative value. As discussed above, the Petitioner's initial and revised business plans present unresovled conflicting information regarding the number of workers the company would hire each year, the positions for which the workers would be hired, the wages the company would pay given positions, which in turn provides inconsistent information regarding the company's operating costs and its financial viability. The Petitioner neither addresses nor reconciles these inconsistencies on appeal; therefore, the business plans specifically, and the evidence in the record in general, bear reduced probative value. *See Matter of Ho*, 19 I&N Dec. at 591. Additionally, the Petitioner does not address on appeal the Director's observation that the Petitioner's business plan "fails to provide adequate information concerning how they made their projections regarding potential employees, revenue, and costs." Given these unresolved inconsistencies and unaddressed evidentiary flaws, the business plans the Petitioner references on appeal do not establish that the proposed endeavor has "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive

economic effects, particularly in an economically depressed area." *See Dhanasar*, 26 I&N Dec. at 889-90.

Although the Petitioner asserts on appeal that she "will establish her company in Florida, an SBA HUBZone area that will help to fuel small business growth in historically underutilized business zones . . . improving the wages and the working conditions for the U.S. workers, and helping the local community bring investments to the region," we note again that the business plans provide implausible information. Specifically, the revised business plan indicates that the Petitioner would employ 17 workers in the first year, increasing employees each year thereafter; however, as discussed above, the principal address of the Petitioner's catering and event planning company matches the address of the Petitioner's private residence as reported on the Form I-140. The record does not reconcile how the Petitioner would employ 17 workers in her private residence, nor does it support her assertions on appeal that employing at least 17 workers in her residence would improve those individuals' working conditions. Additionally, although the Petitioner references her company fueling small business growth, as discussed above, the Petitioner's assertions on appeal that her catering and event planning service company would also provide financial and investment consulting services cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Next, the Petitioner's reference on appeal to her prior work experience in the context of the first *Dhanasar* prong is misplaced. Although an individual's prior work experience is material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—it is immaterial to the first *Dhanasar* prong—whether the specific proposed endeavor has both substantial merit and national importance. *See Dhanasar*, 26 I&N Dec. at 888-90. In turn, the Petitioner's reference on appeal to generalized industry reports and articles in the context of the first *Dhanasar* prong also is misplaced. The record does not contain—nor does the Petitioner identify on appeal—any particular industry report or article that identifies the Petitioner and her proposed endeavor, and that discusses how her endeavor may have national importance. *See id.* at 889-90.

Considering the record in its entirety, the proposed endeavor appears to benefit the Petitioner, her company, and its clients. However, the record does not provide consistent, probative information that supports the conclusion that the proposed endeavor will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible 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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.