U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29127950

Date: JAN. 4, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a tax specialist, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer in this category - and thus a related requirement for the job opportunity's certification by the U.S. Department of Labor (DOL) - if a petitioner demonstrates that waiving these U.S.-worker protections would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. Although finding the Petitioner qualified for the requested EB-2 category, the Director concluded that she did not demonstrate the requested waiver's merits. Specifically, the Director found that she did not establish that her proposed work has "national importance" or that a waiver of the job-offer/labor certification requirements would benefit the United States. On appeal, the Petitioner contends that the Director "imposed novel substantive and evidentiary requirements."

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that she has established her qualifications for the EB-2 category but not the claimed national importance of her proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as members of the professions holding "advanced degrees" or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ the individuals in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term national interest. So, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they demonstrate that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that, in 2012, the Petitioner earned a bachelor's degree in accounting in her home country of Brazil. An automotive company then employed her there for about six years as a tax analyst.

The record indicates that a U.S. business has offered the Petitioner a job as an accounting manager. She stated that, in this role, she would "develop processes that will optimize the financial capacity of the company and will enhance the transparency in their finances."

The Petitioner also plans to establish her own financial consulting firm in the United States to help small- and medium-sized businesses achieve financial stability. Her business plan states that the firm would provide the following services: financial consulting and compliance; auditing; accounting; and business strategy. Headquartered in Massachusetts, the business would also purportedly operate offices in South Carolina and Maine. According to the Petitioner's business plan, after five years of operation, the firm would generate revenues of $5.6 million and employ 20 people.

B. EB-2 Eligibility

The Director found the Petitioner eligible for the requested EB-2 category as a noncitizen of exceptional ability. The record, however, does not demonstrate the Director's consideration of whether she met at least three of six initial evidentiary criteria for the classification. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A-F).[1] Also, in determining her eligibility for the classification, the Director did not engage in a "final merits determination." *See* 6 *USCIS Policy Manual* F.(5)(B)(2), www.uscis.gov/policy-manual (instructing an adjudicator to "evaluate the evidence together when considering the petition in its entirety for the final merits determination").

Nevertheless, the Petitioner has demonstrated EB-2 eligibility as an advanced degree professional. An advanced degree includes "[a] United States baccalaureate degree or a foreign equivalent degree

[1] If the listed evidentiary requirements do not "readily apply" to a petitioner's occupation, the noncitizen may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

followed by at least five years of progressive experience in the specialty." 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree"). An independent, professional evaluation of the Petitioner's foreign educational credentials finds her Brazilian degree equivalent to a U.S. bachelor's degree in accounting. Also, she provided a letter from her Brazilian employer confirming her post-baccalaureate work as a tax analyst for six years and describing her experience. Thus, based on the Petitioner's qualifications as an advanced degree professional, we agree with the Director that she has demonstrated eligibility for the requested EB-2 category.

C. Substantial Merit

We also agree with the Director that the Petitioner's proposed U.S. work has substantial merit. A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The record shows that the Petitioner's proposed endeavor could improve the finances of U.S. businesses, increase compliance with financial rules, and generate jobs for U.S. workers. We therefore affirm the Director's finding that the Petitioner's proposal has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

The Director found insufficient evidence that the Petitioner's proposed U.S. work as a tax specialist would have national implications. The Director stated: "[T]here is no evidence in the record to explain and demonstrate how the [benefits of the] petitioner's proposed endeavor will extend beyond her employer or organization and its clients to impact the industry or the field more broadly."

The record supports the Director's finding. The Petitioner has not explained how her employment as an accounting manager by a U.S. company would substantially improve the national economy or financial field. Also, her business plan projections do not demonstrate the claimed national implications of her proposed endeavor. She has not explained how her business's generation of $5.6 million in revenues and employment of 20 people after five years of operation represents a "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Further, the Petitioner has not established and does not claim that her proposed venture would introduce advancements to the U.S. financial field.

The Petitioner submitted copies of articles and reports about the U.S. financial field and a letter from a U.S. professor of finance stating that the Petitioner's proposed endeavor has national importance. But these materials focus on the national importance of the financial field as a whole, not on the Petitioner's specific, proposed endeavor. Thus, the materials do not establish that her particular venture would substantially affect the U.S. economy or financial field. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (ruling that the immigration service may reject or afford lesser evidentiary weight to expert testimony that conflicts with other information "or is in any way questionable").

On appeal, the Petitioner contends that the Director undervalued evidence of her proposal's national importance. She states that her proposed venture:

> is national in scope, as her professional activities relate to a matter of national importance and impact, particularly because they generate substantial ripple effects upon key commercial and business activities on behalf of the United States - namely, serving the business development, sales, and business functions of U.S. companies.

The Petitioner states that her proposed endeavor would serve "a vital aspect of companies' operations and sales - which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy."

The Petitioner, however, has not sufficiently shown her business's purported "ripple effects" on the U.S. economy. The record does not establish that her firm would have sufficient size or scope to substantially affect the nation's economy or employment rate. Counsel claims that the business's headquarters would lie in a "Hub Zone," referring to a geographical area of historically underutilized business. *See* U.S. Small Bus. Admin., "HubZone program," www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program. But the record lacks proof that a HubZone encompasses the proposed headquarters of the Petitioner's firm and, thus, that the business would benefit an economically depressed area. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

The Petitioner also states: "The need for financial auditing [and] complying with financial audits is a mandatory regulation which is required to be complied with by every business. Therefore, the [Petitioner's] proposed endeavor will affect every business and help in their growth."

Assuming arguendo that all U.S. businesses need and must comply with financial audits, the Petitioner confuses substantial merit with national importance. We agree that the Petitioner's proposal has substantial merit, in part, because it could improve U.S. business compliance with financial rules. But a meritorious endeavor does not necessarily have national importance. As previously indicated, we must focus on the *particular*, proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889. ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). Thus, while the Petitioner's venture could help U.S. businesses become financially compliant, she has not demonstrated that her *particular*, proposed endeavor would help enough businesses to improve financial compliance at a nationally important level.

Dhanasar supports our position. There, we agreed that a proposal to teach courses in science, technology, engineering, and mathematics ("STEM disciplines") to university students had substantial merit. *Matter of Dhanasar*, 26 I&N Dec. at 893. Nevertheless, we did not find the proposal to be nationally important, as "the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.* In other words, the petitioner in *Dhanasar* did not demonstrate that he would teach STEM courses to enough students to affect STEM education on a nationally significant level. Similarly, the Petitioner has not demonstrated that her meritorious proposal to provide financial services would help enough U.S. businesses to impact the economy or the financial field on a nationally important level.

For the foregoing reasons, the Petitioner has not demonstrated that her proposed endeavor has national importance and, thus, that she merits a national interest waiver. As the petition lacks a formal job offer and labor certification, we will affirm the filing's denial.

E. A Waiver's Benefits to the United States

Our conclusion that insufficient evidence supports the claimed national importance of the Petitioner's proposed endeavor resolves this appeal. Thus, we decline to reach and hereby reserve consideration of her appellate arguments regarding a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has demonstrated her qualifications for EB-2 classification as an advanced degree professional. But she has not established the claimed national importance of her proposed U.S. work and, thus, that she merits a national interest waiver.

ORDER: The appeal is dismissed.