U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13064937

Date: JUNE 14, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a legal consultant, 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. *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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> > (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

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).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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 foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.[3]

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 a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that she intends to continue her "career in the United States as a legal consultant."[4] She asserted that her proposed endeavor is aimed at "promoting major cross-border, commercial activities. For instance, I will advise foreign companies, as well as foreign individual investors, on how to efficiently conduct business in the U.S. market." In addition, the Petitioner noted that her proposed work includes advising "U.S. companies looking to commence cross-border transactions with Brazil and other Latin American countries." She explained that she plans to "consult U.S. and foreign companies on important issues relating to cross-border activities, such as 1) tax implications and tax treaties, 2) differing legal systems, 3) dispute resolution, 4) diplomacy, and 5) culture awareness." The Petitioner further stated that her undertaking involves:

- U.S. job creation through the export and import of U.S. goods and services
- Reduction of risk exposure related to cross-border activities involving Brazil and Latin America
- Facilitat[ing] the execution of projects by helping navigate Brazilian and Latin American bureaucracy, including complex regulations pertaining to the legal, business, taxation, and commercial systems
- Facilitat[ing] the acquisition of appropriate licenses and permits, as related to national, local, and regional procedures across the United States, Brazil, and Latin America at large
- Simplify[ing] and improv[ing] access to an extensive collection of key contacts within public office, enabling fluidity of procedures and minimizing unwarranted obstructions across multiple foreign markets, including Brazil and Latin America
- Contribut[ing] to market research for major U.S. investments involving public regulations and government entities in Brazil and Latin America

Additionally, the Petitioner asserted that she owns and manages "a consulting company, [redacted] which is a consulting firm focused on providing tax planning and consulting services. [redacted] is already offering its services in the United States and Brazil - thus prompting cross border and international transactions." She also indicated that she provides "legal consulting services to [redacted]

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

[4] The Petitioner stated that she plans to "pursue an LLM (Master of Laws) in Tax and Immigration Law within the United States, which will then allow me to verify and certify my attorney title and duties in the nation."

[redacted] through [redacted] where my main responsibility is to prospect Brazilian clients who want to structure their taxes, and invest in business in the United States."

In response to the Director's notice of intent to deny (NOID), the Petitioner reiterated that she plans "to work as an International Legal Consultant in the United States providing legal support to commercial activities of U.S. companies that intend to generate revenue from operations in markets abroad, particularly in Brazil and Latin America." She further stated: "I intend to assist executives and business professionals to understand the complex regulatory requirement of Latin America, particularly related to taxation, business regulations, labor structure, permits and governmental bureaucracy."

The Petitioner presented the October 2016 "Articles of Organization" for [redacted] a September 2018 collaborative agreement with [redacted] and invoices for consulting services provided to [redacted] She also submitted a July 2019 letter from [redacted] offering the Petitioner the position of "Foreign Legal Consultant."[5] In addition, the Petitioner offered a July 2019 letter from her U.S. income tax return preparer listing [redacted] revenues and expenses for the six-month period ending June 30, 2019.[6]

The record includes information about the role of foreign direct investment (FDI) in U.S. economic growth, factors influencing FDI in the United States, sources of FDI in our country, the positive effect of rule of law on business, the trade relationship between the United States and Brazil, Latin America market entry blunders, economic unrest in Brazil, and international trade regulatory considerations in legal auditing and due diligence. In addition, the Petitioner provided articles discussing business opportunities in Brazil, foreign investment and nonimmigrant admission trends, U.S.-Brazil foreign relations, the risks of doing business in Latin America, the challenges of tax compliance in Brazil, investor sentiments in the environment for FDI, global tax reporting challenges, the economic outlook for Brazil, the improving business environment in Brazil, and the United States' contribution to the global economy. She also offered information about the unique complexity of Brazil's tax legislation, the ease of doing business in Latin American counties, the value of integrating compliance into business strategy, the complexity of Brazil's tax regime, recruitment challenges in the legal industry, Brazil's impact on the Florida economy, spotting talent in the tax industry, and the trade relationship between the United States and Brazil. The record therefore shows that the Petitioner's proposed work as an international legal consultant has substantial merit.

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 "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further

[5] This letter listed the Petitioner's duties as assisting in "advising clients on the corporate laws and taxations according to Brazilian law" and "prospecting and bringing new revenue to our firm based on your portfolio of existing and new clients." In addition, the job offer letter stated: "You will provide advice to our U.S. tax entity on foreign law to U.S. businesses and accounting scenarios. You will work directly with U.S. tax experts to ensure that our firm's clients are following foreign law with regards to tax reporting and transfer of assets, and will perform forensic accounting analysis of transfers as needed." As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we consider information about this position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* framework.

[6] This letter stated that the Petitioner's company had legal fee income of $75,393, operating expenses of $16,473, and net income of $58,920.

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 her appeal brief, the Petitioner points to her education, business development and foreign investment skills, and work experience in the field of corporate and tax law. The Petitioner's knowledge, skills, and experience 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.

The Petitioner maintains that as a foreign legal consultant, she is "fomenting cross-border transactions, and attracting foreign investors interested in injecting funds in the development of business opportunities in the U.S." She asserts that her proposed endeavor stands "to promote significant international business development and overall foreign investment practices, as well as provide support to foreign companies and investors looking to commence cross-border activities and business services in the U.S. market." The Petitioner also contends that because her consulting company assists numerous "foreign individuals and companies," her undertaking offers "broader and national implications in the business field." She further argues that her proposed endeavor "has significant potential to employ U.S. workers" and stands to affect "the economy nationally and internationally." In addition, the Petitioner states that her "ability to connect with the U.S. markets for cross-border transactions" offers "high potential to substantially impact the economy." Furthermore, the Petitioner claims that she "is able to attract a large sum of foreign investors looking to expand their investment portfolios" and that her undertaking "will be beneficial to the U.S. job market and economy as a whole."

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. Although the Petitioner's statements reflect her intention to provide valuable legal consulting services for her U.S. company and future 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 find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her company and clientele to impact the tax planning field, international investment services industry, business consulting field, or U.S. economy more broadly at a level commensurate with national importance.

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. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. 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. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

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. 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.