U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12484290

Date: SEPT. 14, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a travel management specialist, seeks classification as an individual of exceptional ability in the sciences, arts, or business. *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 employment-based, "EB-2" immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualifies 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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. –

(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.

(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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion,[1] 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, regarding 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

[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).

national's contributions; and whether the national interest in the foreign national's contributions is 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.[2]

II. ANALYSIS

The Petitioner seeks to be a self-employed travel management specialist. The Petitioner holds two bachelor's degrees from universities in Ukraine – one in philology, awarded by [redacted] University in 2012, and one in tourism awarded by [redacted] University in 2014. The Petitioner has worked for various travel agencies. From 2004 to 2011, the Petitioner for [redacted] in [redacted] Ukraine, first as an agent, then as manager of corporate tourism, and finally as director of sales. Beginning in 2011, the Petitioner served as the director and travel specialist at [redacted] in [redacted] overseeing one employee (an accountant/bookkeeper) and five contractors (an information technology specialist, a marketing specialist, and three sales representatives). The Petitioner's position at [redacted] was full-time except from 2012 to 2017, when she also worked as an international representative and regional manager for [redacted] a company based in [redacted] Turkey. The Petitioner has been in the United States since 2018 as a B-2 nonimmigrant visitor, a status that does not permit employment in the United States. *See* 8 C.F.R. § 214.1(e). After filing the petition, the Petitioner established [redacted]

A. Eligibility for the Underlying Immigrant Classification

The Director denied the petition based on the *Dhanasar* framework for national interest waiver petitions, but first we will address a threshold issue relating to the Petitioner's eligibility for the underlying immigrant classification. The Director determined that the Petitioner qualifies for classification as a member of the professions holding an advanced degree. We disagree, as explained below.

The Petitioner has made ambiguous statements about which classification she seeks. In her introductory letter, she states that she "seeks classification under the second-employment based preference for advanced degree professionals," and asserts that her progressive post-baccalaureate experience is equivalent to a master's degree as provided by 8 C.F.R. § 204.5(k)(3)(i)(B), but she also discusses the evidentiary criteria for exceptional ability as set forth at 8 C.F.R. § 204.5(k)(3)(ii).

In the denial notice, the Director concluded that "the petitioner has established that she is a professional holding two Bachelor's degrees and more th[a]n five years of progressive experience." The Petitioner's degrees and experience are relevant only if the occupation *requires* a bachelor's degree. The regulations define a profession as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation."[3] In this instance, it is clear that none of the Petitioner's past positions in the tourism industry required a bachelor's degree, because she started in each of those jobs before she received her first bachelor's degree at the

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

[3] *See* 8 C.F.R. § 204.5(k)(2). The same regulation also cites a more limited statutory definition that does not apply to this proceeding.

end of May 2012. In the United States, the Petitioner intends to be self-employed, and has not shown that the lack of a bachelor's degree would have prevented her from starting such a business.

For the above reasons, we withdraw the Director's finding that the Petitioner qualifies as a member of the professions with post-baccalaureate experience equivalent to an advanced degree. Because we will dismiss the appeal for other reasons, we will not undertake an initial determination regarding exceptional ability at the appellate stage.

Below, we will discuss the Petitioner's national interest claim under the *Dhanasar* framework. The Director concluded that the Petitioner had not met any of the three *Dhanasar* prongs.

B. National Importance of the Proposed Endeavor

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. 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. But we do not evaluate prospective impact solely in geographic terms. Instead, we look for broader implications. 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.[4]

In denying the petition, the Director concluded that, although the Petitioner provided general background information about the tourism industry, she did not establish "the effect a single travel management specialist can have on the industry" or "establish how the work of a single market analyst could have such prospective impact as to be considered nationally important." We agree with the Director's conclusions, as explained below.

In a statement submitted with the initial filing of the petition in March 2019, the Petitioner asserts that her "combination of . . . education and experience provides a very strong foundation for development of hospitality management and tourism in the USA strategically concentrating on needs of small and medium business." The Petitioner states that she sees untapped potential in "medical tourism and ecotourism," and asserts: "I have [a] valuable and proven record of achievements in [those areas] that I would like to share in assisting travel agencies, destination management companies and tour operators in transformation to increase their savings and introduction of innovative travel options." The Petitioner states that she "will continue to assist other businesses in [the] travel industry," but does not provide any details about how she intends to do so. The Petitioner provides information about her past work abroad, but she worked in various capacities, both as a consultant and in charge of her own travel company, so this information does not show what she intends to do in the United States.

The Petitioner states that tourism is a "global and important industry," and that her "work experience and skills will directly benefit businesses of various sizes around the USA significantly reducing costs of doing business and increasing their efficiency." The Petitioner does not elaborate or explain how

[4] *Dhanasar*, 26 I&N Dec. 889-90.

her work will achieve these results. The national importance of the tourism industry as a whole does not establish that the Petitioner's proposed endeavor, in particular, has national importance.

The Director requested additional evidence and information about the proposed endeavor. In response, the Petitioner states that she "is pursuing application of new technologies to keep [the] travel industry of the USA competitive in comparison to other countries. . . . Consequently, her endeavor is of national importance because . . . she will not be limited to one geographic area or a single company."

The Petitioner submits information about [redacted] stating that the company will offer "Tourism Product Development," "Web Digitalization, Branding and Marketing," "PR & Media Relations," "Interim management and implementation," and "Investment Consulting" to "Host/Travel/Cruise Agencies," "Tour operators/Destination management companies," "Independent travel agents," and "State tourism offices."

The record shows that the Petitioner registered [redacted] as a fictitious business name in late September 2019, six months after she filed the petition in March of that year.[5] The Petitioner does not claim or establish that [redacted] existed at the time of filing, and she did not mention the company in her initial submission.

A business plan submitted in response to the request for evidence has inconsistent wording, suggesting that the document was assembled from a number of unidentified sources. Some parts of the plan refer to the company as though it were already operating with employees. For example, the "Investment Consulting" section includes this passage: "Our team's experience and network of relationships in the hospitality and tourism industries, combined with our foresight on global economic growth trends, enable us to guide you through the expansion process." The "Web development" section states "our consultants have . . . extensive experience of creating and working with both the public and private sectors, operating across tourism, economic development, regeneration and culture."

Second-person pronouns also appear in some of the job descriptions for proposed staff. The job descriptions for "Business Development Manager" and "Project Manager" are identical, and both of them include the passage: "You will be instrumental in devising and implementing the strategy for meeting sales performance targets."

The Petitioner had no employees when it prepared the business plan; another section of the plan specifies that the Petitioner would be the sole employee for its first year of operations. Therefore, it is premature, at best, to attest to the expertise of a team which has not yet been assembled, hired, or even identified. The Petitioner personally claims no prior experience in several of the areas described, and therefore it is not evident that she has demonstrated "foresight on global economic growth trends."

The "Investment Consulting" section of the document reads like marketing directed at clients rather than a business plan, with second-person references such as "guide you through the expansion process" (as quoted above), "directly connect your development team to appropriate forums," and "we will

[5] The printout from the [redacted] Registrar's website identifies [redacted] as a fictitious business name, but does not identify the holder of that name or specify whether it is a person or a legal entity (such as a corporation). The business plan in the record appears to refer to [redacted] as a sole proprietorship, indicating that the company "starts as an SP for the first 9-12 months, after will be set up as a corporation [*sic*]."

provide all of the support necessary to ensure you secure funding." The projected staffing described in the business plan does not list any investment consultants.

The plan also indicates that [redacted] will offer "Website development, hosting, maintenance, and domain management," and will "Update your website with points of particular interest." This activity lies considerably beyond the Petitioner's initial vague description of assisting businesses in the travel industry, and would appear to require a significant investment in servers and other infrastructure not otherwise reflected in the business plan.

A separate "Business Plan Presentation," which appears to consist of printouts from an electronic slide presentation, discusses the use of virtual reality technology, but the business plan discussed above does not mention virtual reality at all.

Because the submitted information provides conflicting information about the proposed endeavor, the exact nature of that endeavor remains in question.

The Petitioner's business plan for [redacted] does not anticipate a particularly large staff, and therefore the company would not be a major employer. The Petitioner has not explained how the company would have a significant impact beyond its clients. General assertions about the tourism industry as a whole do not establish the point, because the Petitioner would not be responsible for the entire tourism industry.

The Petitioner cites published articles to show "success for a similar concept that created new jobs." One article, attributed to the *New York Times* but submitted as a printout with no author credit or publication date, describes a "travel company" engaged in "bringing investment to its business partners overseas" by "partnering with and investing in local businesses."[6] The company described is, like the Petitioner's planned company, involved in tourism, but the article does not provide enough information to show that the ventures are similar to one another.

The Petitioner also submits several articles about how the travel industry might exploit virtual reality technology, which, as noted above, was not mentioned in the Petitioner's initial submission or in [redacted]s business plan.

On appeal, the Petitioner describes activities after the petition's filing date that deviate from earlier assertions about the proposed endeavor, such as contracts with travel companies. This evidence does not establish eligibility at the time of filing, as required by 8 C.F.R. § 103.2(b)(1), and it does not show errors of fact or law in the Director's decision, as required by 8 C.F.R. § 103.3(a)(1)(v). Therefore, detailed discussion of this new information would not affect the outcome of the appellate decision.

The Petitioner's description of her proposed endeavor was vague at first, and the subsequent details are somewhat inconsistent. The Petitioner's assertions about the national importance of the proposed

[6] The article appears to be a promotional piece for an investment platform mentioned in the article; the printout ends with a question: "After reading this article how likely are you to consider investing with iShares ETFs?," followed by a disclaimer: "This material is provided for informational purposes only and does not constitute a solicitation in any jurisdiction in which such solicitation is unlawful or to any person to whom it is unlawful." A large iShares watermark appears on one page of the printout, partially obscuring the text.

endeavor amount to generalities and speculation, rather than specific, corroborated information about the impact of her proposed work in particular.

For the above reasons, we conclude that the Petitioner has not established the national importance of her proposed endeavor. Because this issue, by itself, determines the outcome of the appeal, we reserve the remaining *Dhanasar* prongs.[7]

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[7] *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).