U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19634261

Date: AUG. 2, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a supply chain manager, 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 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. –
>
> (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, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. 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 noncitizen's qualifications or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen's contributions; and whether the national interest in the noncitizen'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]

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[1] *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).

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

II. ANALYSIS

The record indicates 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 conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework. Specifically, we conclude that the Petitioner has submitted insufficient and inconsistent evidence regarding the substantive nature of her proposed endeavor.

The Petitioner indicated in her initial filing that she intends "to continue using [her] expertise and knowledge in the field of freight forwarding by working as a Supply Chain Manager in the United States." She stated in her professional plan and statement that she plans to "enter American companies with the ability to provide expert advice and guidance regarding supply chains and optimize the flow of materials, information, and finances as products move from supplier to customer." She further stated that by using her skills and knowledge in logistics, import-export, and supply chain management "she will help companies maximize their value and reduce total costs across the entire trading process, while helping increase employment in the United States." Additionally, the Petitioner asserted that as a result of her contacts and experience in Brazil, she "can also enter U.S. companies with the ability to provide expert advice and guidance regarding cross-border contracts with Brazil and Latin America," noting that her expertise in this field would allow her to assist U.S. companies doing business or planning to do business in Brazil.

The Petitioner further described the potential impacts of her proposed endeavor as follows:

> My specific endeavor will potentially impact the U.S. in the following ways:
>
> - U.S. job creation through managing and directing supply and transportation logistics;
> - Improve customer satisfaction;
> - Decrease purchasing costs;
> - Create higher profit margins; and,
> - Train inexperienced employees in the supply and transportation logistics industry.
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> Environmental Benefits
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> - Increase efficiency to decrease pollution; and
> - Increase efficiency to save on energy usage.
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> Economic Benefits
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> - Decrease production costs;
> - Decrease total supply chain costs;
> - Generate tax revenue;
> - Increase cash flow; and,
> - Job creation.

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding her proposed endeavor and its national importance. In response, the Petitioner provided a revised professional plan and statement, and stated that she "will provide quality

professional services and logistics consulting through [her] company, [redacted] for U.S. companies regardless of the size and backgrounds, contributing to acceptable import and export practices, and strengthening commercial relations with key market segments." Although parts of her revised statement repeat her earlier assertions, she indicated that her newly-formed company currently imports and exclusively distributes [redacted] products, which she stated are vegan and organic cosmetic products "that have direct impact on the well being of the health of U.S. individuals." The Petitioner claimed that her company generates indirect jobs for hairdressers by supplying them with FDA-approved organic products, and that her ultimate goal is to manufacture [redacted] products in the United States. In this new statement, she omitted mention of seeking direct employment with U.S. companies as a supply chain manager and instead stated that she will be an entrepreneur and CEO/owner her own company.

In the decision denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of her proposed endeavor. The Director acknowledged that the Petitioner appeared "to be engaging in a proposed endeavor completely different from the proposed endeavor listed in the statement submitted with the Form I-140," but nevertheless evaluated the new evidence submitted in response to the RFE and concluded that the Petitioner had not shown that her undertaking "has national or even global implications within a particular field or industry." The Director also indicated that the Petitioner had not demonstrated that her proposed work stands to have a broader effect on the regional or national economy.

On appeal, the Petitioner contends that she has demonstrated the national importance of her proposed endeavor under the preponderance of evidence standard and that the Director's decision was in error because it imposed a "stricter standard of proof." With respect to the standard of proof in this matter, a petitioner must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what she claims is "more likely than not" or "probably" true. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director analyzed the Petitioner's documentation and weighed her evidence to evaluate whether she had demonstrated, by a preponderance of the evidence, that she meets the first prong of the *Dhanasar* framework.

In determining national importance, the relevant question is not the importance of the field, 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 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.

Here, the nature of the Petitioner's proposed endeavor is unclear. The information she provided in the response to the Director's RFE did not clarify or provide more specificity to her initially described

proposed endeavor of working as a supply chain manager, but rather it changed the focus of her work and the nature of her proposed endeavor altogether. As noted by the Director, the Petitioner's initial filing contained little to no information on her proposed endeavor but simply included a statement that her occupation is as a supply chain manager and that she intended to offer her services to U.S. companies. Although her general assertions about the occupation explain why a given company would hire a supply chain manager, they do not show that the work of any one particular supply chain manager has national importance.

Moreover, her initial assertions about trade with Brazil did not explain how her knowledge of the Brazilian market would lend national importance to her proposed endeavor. General statistics about Brazilian trade do not suffice in this regard, because this information does not establish the impact of the Petitioner's proposed endeavor. Skills and experience do not take on national importance merely because they are potentially useful to prospective employers. Also, the Petitioner proposed no specific endeavor relating to those plans. Rather, she asserted that an employer seeking to do business in Brazil could benefit from her knowledge of that country. Finally, while she initially listed the impacts of her proposed endeavor and asserted that they would have substantial environmental and economic impacts, the Petitioner did not elaborate on these claims. Some of these claimed benefits are employer-specific (such as impact on costs and profit margins); others lack sufficient explanation.

In response to the RFE, she provided a revised professional plan indicating that she founded a business that imports and exclusively distributes [redacted] products, and emphasized that her ultimate goal is to manufacture [redacted] products in the United States. The record shows that the Petitioner did not form her new company until July 2019, six months after she filed the petition. Her initial description of the proposed endeavor did not include any plans to form such a company, and the Petitioner does not explain how she would be able to devote sufficient attention both to running her own company and to a supply chain manager position with one or multiple U.S. companies, as originally asserted. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's establishment of a new company after the filing date cannot retroactively establish eligibility, and a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The Petitioner's focus on cosmetic import and manufacturing presented in the RFE substantively differs from her initial plan to provide services to U.S. employers as a supply chain manager. Even if we were to accept her general assertions that she also intends to provide supply chain management services in an entrepreneurial capacity through her new company, which we do not, the record does not support such an assertion. For example, the business plan for her new company provides information on market segmentation for various cosmetic products including fragrances, skincare, healthcare, nail products, and deodorants, and includes information on external competitors such as Sephora, Ulta, and Bath & Body Works, LLC. The company goals include sales forecasts for various beauty products such as keratin and beauty maintenance kits, and the marketing strategy is specific to site and social media, seminars, and traditional media focused on gaining new customers for [redacted] [redacted] There is no mention of supply chain management or logistics consulting services, or the

manner in which such services would be provided. We therefore conclude the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. Again, the Petitioner's establishment of a new company and her revised plan to focus her endeavor on cosmetic import and manufacturing presented after the filing date cannot retroactively establish eligibility. We reiterate that a petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175; *see also Matter of Katigbak*, 14 I&N Dec. at 49.

Although the Petitioner maintains on appeal that she "will focus the impact of her business by providing consultation and services in supply chain and logistics management with a focus on improving processes, enabling cost reductions, and improving supply chain operations through quality freight and consultancy services," the record does not support this assertion for the reasons noted above. Moreover, she does not sufficiently explain how her revised plan has national importance, rather than primarily benefiting her own company and its clients. Specifically, she asserted in her revised professional statement that her ultimate goal "is to manufacture [redacted] products in the US using a local plant in [redacted] increasing the production line, generating employability, and more." The Petitioner does not address this alternate endeavor on appeal and instead repeats prior assertions about the overall importance of supply chain management. These assertions are not persuasive because the collective impact of logistics and supply chain management does not impute national importance to the activities of any one particular supply chain manager. Moreover, and most importantly, the Petitioner does not address the contradictory claim that her ultimate goal is to manufacture cosmetic products rather than provide supply chain management consulting services. Although she indicates that her company will also provide integrated logistics solutions, the record does not support this assertion.

Accordingly, the specific nature of her proposed endeavor remains unclear. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. We conclude that her initial filing and the RFE response contained differing jobs[3] and insufficiently detailed statements concerning her proposed future work. Furthermore, her appeal contains little attempt to address the Director's concern that she changed her proposed endeavor in response to the RFE, as well as the fact that her new position as an entrepreneur and company owner began after the initial filing of the petition. If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

Therefore, since we are unable to specifically identify the Petitioner's proposed endeavor, we are likewise unable to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. Here, while the Petitioner's initial statements reflect her intention to provide supply chain management and consulting services for U.S. businesses, and revised statements indicate that she intends to import and manufacture vegan and organic cosmetic products for the

[3] On page 9 of the business plan, the Petitioner is identified as "an IT Security and Network expert," which contradicts her continued assertions that she is a supply chain manager.

benefit of U.S. consumers, she has not offered sufficient information and evidence to demonstrate that the prospective impact of either 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 her field more broadly. *Id*. at 893. Here, we conclude the record does not show that either of the Petitioner's proposed endeavors stands to sufficiently extend beyond her company and its future clientele, or companies to whom she may lend her expertise, to impact the fields of logistics and supply chain management or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that either endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. As previously noted, she provided no specific information or data relevant to economic effects potentially resulting from supply chain management consulting services offered to U.S. companies. Moreover, she has not shown that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States.[4] The business plan does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. While the sales forecast for [redacted] indicates that the Petitioner's company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. In addition, although the Petitioner asserts that her company will hire U.S. employees and that her endeavor will "increase employment" and provide jobs for various individuals in the hairdressing field, she has not offered sufficient evidence that the area where her company operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the Petitioner has not provided consistent information regarding her proposed endeavor, we cannot conclude that she meets the first prong of the *Dhanasar* precedent decision. The Petitioner, therefore, 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.

ORDER: The appeal is dismissed.

[4] The business plan asserts that the company will generate revenues of approximately $300,000 in 2021, which will steadily climb each year to reach revenues of over $1.7 million in 2025, and as a result will have created at least 12 jobs in that timeframe.