U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 26375303

Date: APR. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial analyst and manager, 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 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 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

We first note that, in the decision, the Director did not address whether the Petitioner qualifies for second-preference classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* section 203(b)(2) of the Act. Similarly, the Director addressed evidence relating to second-preference classification as an individual of exceptional ability in a request for evidence (RFE); however, the Director did not state whether the Petitioner qualifies as such. Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See id.*; *see also 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"); *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).

Initially, the Petitioner described the endeavor as a "plan to continue [her] studies and complete the remaining 2 modules to obtain a CGMA (Chartered Global Management Accountant) degree and become a full member of [the Chartered Institute of Management Accountants (CIMA)]." The Petitioner added, "I dream of applying my experience, skills, and knowledge for the benefit of the United States, because [f]inancial [a]nalysis and [m]anagement is exactly what I do the best." The Petitioner further asserted, "I am confident that I can make a huge contribution to the development of this sector of the economy both within one company and for the United States as a whole." However, the Petitioner did not elaborate on what her specific endeavor would entail and how she would "make a huge contribution to the development of this sector of the economy," either directly for her unspecified employer or for the United States as a whole.

In an RFE, the Director acknowledged that "the [P]etitioner submitted a statement, but the statement failed to provide specific insight as to what she intends to do as a financial analyst and manager." The Director informed the Petitioner that the record does not establish that the Petitioner satisfies any of the *Dhanasar* prongs without first establishing what the proposed endeavor would entail, and the Director requested additional evidence to establish eligibility.

In response to the Director's RFE, the Petitioner submitted various articles that she asserted relate to "a shortage of skilled professionals in finance" in the United States. The Petitioner also stated, for the first time, that she "plans to register her own company . . . dedicated to providing consulting services to various entities that operate in the United States financial market and help them achieve continuous improvements in reporting and tracking methodologies, driving their sustainable growth." The

Petitioner further asserted that "[h]er company will target clients throughout the United States. She expects to create job opportunities in this country."

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 Petitioner did not initially state that her proposed endeavor would entail registering her own company, providing consulting services to multiple companies, or creating job opportunities. On the contrary, as noted above, the Petitioner initially described her proposed endeavor as obtaining a CGMA degree, becoming a full member of CIMA, and working in finance to contribute to "the development of this sector of the economy *within one company* and for the United States as a whole" (emphasis added). Therefore, the Petitioner's assertions in response to the RFE that she would register her own company, provide consulting services to multiple companies, and create jobs present a new set of facts. Moreover, the new set of facts is material to the first *Dhanasar* prong because they relate to whether the specific endeavor may have broader implications. *See Dhanasar*, 26 I&N Dec. at 889-90. Because the new set of facts presented in response to the RFE constitute a material change to the petition, they cannot and do not establish eligibility, and we need not address them further. *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.

The Director stated that "although the [P]etitioner highlights that there is an occupational shortage in the United States, such a shortage does not, by itself, establish that her work stands to impact the broader field or otherwise have implications rising to the level of national importance." The Director further observed that "the [P]etitioner 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." The Director ultimately concluded that "the [P]etitioner's proposed work does not meet the national importance part of the first prong of the *Dhanasar* framework." We note, however, that the Director did not determine whether the proposed endeavor has substantial merit.

On appeal, the Petitioner repeats the new set of facts presented in response to the RFE, which cannot and do not establish eligibility as discussed above. The Petitioner also asserts that the Director "erred by finding that [she] has not shown sufficient evidence she will impact her field and create jobs." To support her assertion, the Petitioner references two employment confirmation letters in the record, one from the general director of the Association of [redacted] and one from the senior cluster revenue manager at [redacted] Specifically, the Petitioner notes that the former asserts the Petitioner "will make a 'tremendous contribution' to the entire financial services industry" and that the latter "attested that [the Petitioner] restructured their company in a way that increased profits by 15 percent."

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.

The Petitioner's reliance on appeal on the two referenced employment confirmation letters in the context of the first *Dhanasar* prong is misplaced. Although the letters confirm that the Petitioner worked for the respective employers and they summarize her duties in her respective roles, neither letter addresses the "specific endeavor [she] proposes to undertake." *See id.* at 889. More specifically, neither employment confirmation letter conveys an understanding of how the Petitioner's plan to obtain a CGMA degree, become a full member of CIMA, and work in finance to contribute to "the development of this sector of the economy within one company and for the United States as a whole" will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *See id.* at 889-90. Likewise, neither letter establishes how the proposed endeavor may have broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* Instead, the letters focus on the Petitioner's past performance and how that benefited their own respective companies at that time. Although the Petitioner's prior work experience is material to the second *Dhanasar* prong, whether she is well-positioned to advance the proposed endeavor, it is not material to the first *Dhanasar* prong, whether the specific, prospective endeavor has substantial merit and national importance. *See id.* at 888-91.

Even if the new set of facts that the Petitioner presented in response to the Director's RFE could establish eligibility—which it cannot and does not for the reasons discussed above—the Petitioner's altered description of the proposed endeavor does not provide sufficient information to determine whether it may have national importance. For example, although the Petitioner asserted that she would "register her own company . . . dedicated to providing consulting services to various entities that operate in the United States financial market" and that she "expects to create job opportunities in this country," she did not provide further details about where the company would operate, the types of jobs she would create, the number of employees she would hire, where the employees would work, and other details that address whether the endeavor may 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 Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.* Furthermore, because we find that the record does not establish the proposed endeavor has national importance, we reserve our opinion regarding whether it establishes the proposed endeavor has substantial merit. *See id.*

## 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.