U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25692219

Date: MAR. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an attorney and international tax consultant, seeks employment-based second preference (EB-2) 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 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, although the Petitioner qualifies for the underlying classification, the evidence did not establish the national importance of the proposed endeavor and that a waiver of the requirement of a 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. *See* section 203(b)(2) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is considered the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the

framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner earned a bachelor's degree in law from a Brazilian university in 2009 and later completed a one-year post-graduate program in civil and procedural law at the same university. According to the Petitioner's résumé, she worked as a tax consultant with the City of [redacted] Environmental Law Department (from 2008 until 2013) and as a law partner, specializing in tax law, with [redacted] (from 2010 until 2019). The Petitioner entered the United States in July 2019 as a B-2 nonimmigrant visitor for pleasure and filed this petition in December 2019.

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. Therefore, the primary issue before us on appeal 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.

The first prong of the *Dhanasar* framework, "substantial merit and national importance," focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889. For the reasons discussed below, the Director determined, and we agree, that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[2]

The Petitioner indicates that she intends to work as an international tax consultant in the United States. In a personal statement, she stated that she intends to "provide appropriate technical guidance to individuals and partnerships with U.S. and Brazilian offices to encourage investment in both the U.S. by the Brazilian community . . . as well as by Americans who often decide not to invest in Brazil because of misunderstanding of the 'confusing tax law.'"

The Petitioner provided evidence that she is the sole member of [redacted] a Florida limited liability company established in 2019. According to a submitted business plan, the Petitioner's company will offer tax consulting services to U.S. businesses and individuals seeking to make investments in Brazil and provide investment and financial consulting services for Brazilian

[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).

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

investors considering entry into the U.S. market. The business plan states that these services will benefit the "overall U.S. economy" by (1) increasing efficiency and reducing costs for client companies; (2) transferring the Petitioner's knowledge to newly hired financial consultants and tax lawyers; (3) enabling foreign direct investment in the United States that will generate economic growth; and (4) stimulating the U.S. economy through creation of eight new jobs within five years.

Specifically, the business plan indicates that the company will employ a general manager (the Petitioner), three financial consultants, three tax lawyers, an administrative assistant, and additional independent contractors. The included financial projections estimate that the company will have total payroll expenses of over $526,000, sales revenue of $824,500 and will generate $125,000 in tax revenue in its fifth year of operations. The business plan states that the company will be headquartered in [redacted] and will initially target Florida, but will expand its target areas to include Georgia, California, and New York by its fourth year.

The Petitioner's initial evidence also included an article about [redacted] real estate market and an article about Florida's economy, which highlights both international trade and financial services among industries that are driving economic growth in the state.

The Director issued a request for evidence (RFE) advising the Petitioner she would need to provide additional evidence addressing the national importance of the proposed endeavor. In response, she re-submitted her company's business plan and provided an advisory opinion letter from an accounting professor at [redacted] University [redacted] The letter provides background information regarding international tax regulations, accounting, financial analysis, and financial reporting in the context of the business environment. It also generally explains why the professional services of international tax consultants and financial consultants are beneficial to businesses and emphasizes the increasing demand for experts in these fields. The writer concludes that "because of the importance of a well-trained financial expert for all companies in all industries, the position of an experienced consultant in the field is vital to the United States."

In discussing the specific proposed endeavor, the professor states that Florida, as a gateway for bilateral trade between Brazil and the United States, "is a location with great potential for opening a business that facilitates international exchange" between the two countries. He notes that due to the complexity of Brazil's tax system, many entrepreneurs and business owners have been dissuaded from starting or investing in business in Brazil. He emphasizes that by providing tax consulting to U.S. investors looking to invest in Brazil, the Petitioner's company "will contribute to the economy of both countries and bridge the persisting knowledge . . . gap." Finally, the writer emphasizes that the Petitioner's company will generate job opportunities for up to eight U.S. workers within five years, which will result in payroll taxes being paid as well as the employees reinvesting their earnings back into the economy, thus benefiting "the overall economy of the country." A second advisory opinion letter, written by a Florida-licensed attorney, states that the Petitioner's company will result in job creation and that its clients "will also contribute to the American economy and indirectly create jobs for qualified individuals."

The Director acknowledged the Petitioner's business plan for her company and the letters submitted in response to the RFE but determined that she had not established the national importance of her specific proposed endeavor. On appeal, the Petitioner asserts that the Director did not apply the

preponderance of the evidence standard when evaluating the national importance of the proposed endeavor under the *Dhanasar* framework. The appellate brief incorporates long excerpts from the Petitioner's personal statement, the business plan and expert opinion letters and asserts that the Director appeared to overlook much of this evidence. The Petitioner maintains that her proposed endeavor will have "a far reach" because it targets both U.S. and foreign companies in need of tax consulting and other financial services.

When 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." *Dhanasar*, 26 I&N Dec. at 889. As noted by the Director, the Petitioner's response to the RFE relied heavily on the NYU professor's advisory opinion letter, a letter that primarily addresses the importance of the Petitioner's industry and profession by generally explaining why tax experts and financial consultants are beneficial to U.S. businesses. The Director acknowledged that the advisory opinion letter emphasized the increasing demand and need for individuals who possess the Petitioner's expertise but determined that statements about the occupation or the field in general do not establish how the specific proposed endeavor stands to impact the broader field or otherwise establish its national importance. The Petitioner's claim that the Director did not consider this evidence or give it sufficient weight is unpersuasive.

Further, we agree with the Director's assessment of the expert opinion testimony. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

Here, as noted, much of the content of the advisory opinion letter is lacking relevance because it discusses the importance of the Petitioner's industry and occupation rather than addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the *Dhanasar* framework. The writer offers little analysis of the proposed endeavor and its prospective substantial economic impact and does not otherwise address the implications of the proposed endeavor on the larger field of tax or financial consulting. Rather, he concludes that the professional services that international tax and financial consultants play is "of national importance to the United States" and states that someone like the Petitioner, who is an expert in the field, would therefore "greatly benefit US based business and organizations and allow them to retain more revenue."

The Director also considered the business plan and determined that it did demonstrate that the company's future staffing levels and consulting activity would provide substantial economic benefits in Florida or the United States. The record supports the Director's conclusion. Although the business plan reflects that the company will hire several workers, the record does not contain sufficient evidence to reflect that the area where it will operate is economically depressed, that it would employ a significant population of workers in the area, or that the specific proposed endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue. In this regard, we note that the Petitioner provided a 2019 *Investopedia*

article titled [redacted] indicating that Florida has the fourth-largest economy in the United States with a GDP of $840 billion and that the state's financial services sector has nearly 130,000 firms employing almost 900,000 Florida residents. The record does not support that the creation of eight additional jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

Although the business plan mentions the company's intent to target clients in other states, it does not elaborate on these plans or indicate that it will open additional branches or offices that might extend its impact. The business plan also indicates that the Petitioner's company would offer additional economic benefits including enabling foreign direct investment in new or existing U.S. businesses, and increased efficiency and cost reduction for clients that use its services. However, these statements are not supported by financial projections. Although the proposed endeavor may benefit the client companies that engage the Petitioner's company, the record does not sufficiently show that such benefits, either individually or cumulatively, would rise to the level of national importance.

On appeal, the Petitioner relies upon the evidence and arguments already submitted. She reiterates the importance of the industry or profession, her expertise, and her role within the newly formed company; however, these factors do not sufficiently establish the national importance of the proposed endeavor. The Petitioner likewise reiterates her professional experience and abilities. While important, the Petitioner's expertise acquired through her employment relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong.

In light of the above conclusions, the Petitioner has not met her burden of proof to establish that she meets the first prong of the *Dhanasar* national interest framework. Although the Director also concluded that the Petitioner had not established her eligibility under the third prong of the *Dhanasar* framework, detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion.[3]

III. ELIGIBILITY FOR EB-2 CLASSIFICATION

The Director determined that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree under section 203(b)(2)(A) of the Act. Specifically, the Director determined that the Petitioner submitted an official academic record and a credentials evaluation demonstrating that she holds the foreign equivalent of a United States baccalaureate degree and evidence in the form of letters from her employers documenting that she has at least five years of progressive post-baccalaureate experience in the specialty.[4] *See* 8 C.F.R. § 204.5(k)(3)(i)(B). While the record demonstrates that the Petitioner has the foreign equivalent of a U.S. bachelor's degree in

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

[4] In the decision, the Director stated that the Petitioner's RFE response included letters from [redacted] attesting to the Petitioner's five years of progressive experience. However, the record reflects that the Petitioner has not submitted letters from these entities or identified them as her current or former employers.

legal studies and includes letters attesting to her experience in the field, it contains unresolved inconsistencies that undermine the probative value of those letters.

The Petitioner submitted Part B of Form ETA 750, Application for Alien Employment Certification, attesting to her education and work experience. Where asked to provide details regarding her prior employment, she stated "please see résumé." As noted, the Petitioner's résumé indicates she worked as a law partner for [redacted] from 2010 until 2019 and as a tax consultant for the City of [redacted] Environmental Law Department from 2008 until 2013.

The Petitioner's initial evidence included a reference letter from the attorney general of the City of [redacted], who confirmed her service as a legal advisor in the city's environmental and urban planning attorney's office from 2008 to 2012. She submitted two additional employment letters in response to the RFE, including a second letter from the attorney general of the City of [redacted] who stated that she worked for the city as a legal advisor on a full-time basis from September 2008 until December 2013. In addition, the RFE response included a letter signed by two representatives of [redacted] Attorney Associates, who attest that the Petitioner worked as a tax attorney for their firm on a full-time basis from January 2014 until December 2019.

The two letters from the City of [redacted] are not sufficient to document the Petitioner's five years of progressive post-baccalaureate experience. The letters, which are attributed to the same individual, contain different dates of employment and the writer did not indicate in the second letter that she was making a correction to her previous statement or otherwise acknowledge the inconsistency. In addition, although the letter provided with the RFE response indicates that the Petitioner was employed by the City of [redacted] attorney's office on a full-time basis for more than five years, the record reflects that she did not complete her bachelor's degree until December 2009, which would give her, at most, four years of post-baccalaureate experience with this employer.

The letter from [redacted] Attorney Associates indicates that the Petitioner worked for this firm on a full-time basis for a period of approximately six years. However, the Petitioner herself did not claim any employment with this entity in her personal statement, résumé, business plan, Form ETA 750, or her concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status, where she consistently identified [redacted] as her only other employer. Despite the Petitioner's submission of a letter from [redacted] Attorney Associates confirming her employment, we cannot overlook that there are no other references to this firm in the record, which undermines the probative value of the submitted employment letter. As a result, the record as presently constituted does not sufficiently document the Petitioner's five years of post-baccalaureate employment through letters from her current or former employers, as required by 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As noted, the Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree despite the unresolved inconsistencies in her employment history, and the Petitioner was not put on notice of the need for such evidence. However, the Petitioner will need to address this issue if she pursues a motion or files a new petition requesting this classification.

IV. 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.

ORDER: The appeal is dismissed.