U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25691303

Date: MAR. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources 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. 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.

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 –
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> (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.

In addition, the regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the [individual] must have a United States doctorate or a foreign equivalent degree.

Furthermore, 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.

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[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).

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 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

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.[4] Accordingly, the issue to be determined 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a "Professional Plan" dated June 2021 indicating:

> [The Petitioner] has approximately 13 years of experience in working as the owner of a law firm . . . as well as the owner/partner of a law firm . . . in Brazil. [The Petitioner] significantly contributed to the growth of companies located in . . . Brazil, by handling their legal, operations, and administrative matters, including those related to human resources administration and policies.
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> . . . .
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> [The Petitioner's] endeavor is to contribute to U.S. businesses in various industries by helping them with a variety of human resource matters, including the implementation of policies to increase staff inclusivity and diversity. Furthermore, she aims to contribute to the advancement and improvement since the U.S. already has workplace safety laws in place.

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

[4] The Petitioner presented a copy of her diploma for her bachelor of law degree from the Universidade [redacted] in Brazil. She also submitted an academic evaluation report which concluded that the aforementioned degree is the foreign equivalent of a bachelor's degree from an accredited college or university in the United States. Further, the Petitioner provided evidence in the form of letters from those who employed her services showing that she has at least five years of progressive post-baccalaureate experience in her specialty. 8 C.F.R. § 204.5(k)(3)(i)(B).

> In the future, [the Petitioner] plans to create her own U.S. human resources consulting company to provide such services. Initially, consulting services will be offered exclusively by her. In the long term—approximately 5 years—she will be able to transfer her knowledge and experiences to other professionals in the area of human resources .... In addition to consultancy services, she plans to have her company delivering training and lectures to increase employee awareness regarding multiple critical themes related to the work environment. The consulting services will be provided at the clients' locations. [The Petitioner] and her staff will visit various workplaces to learn about difficulties they may be experiencing regarding employee relations or human resources in general.

In response to the Director's notice of intent to deny (NOID), the Petitioner submitted a "Personal Plan" dated November 2020 indicating:

> [The Petitioner]'s endeavor is to contribute to U.S. businesses in various industries by helping them with a variety of administrative and human resource matters, including the implementation of policies to increase staff inclusivity and diversity.
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> ....
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> [The Petitioner's] advanced qualifications make her well positioned to pursue her significant endeavor. Her industry knowledge, experience, and industry skills will play a significant role in providing business administration and human resources services to organizations operating in a variety of industries.

On appeal, the Petitioner maintains that her proposed endeavor as a human resources manager will expand the implementation of diversity, inclusion, and equity initiatives and work injury protection programs in American companies, and her "vast experience in legal consulting on labor issues for companies in Brazil" will result in "increase in the motivation of American workers; growth in the productivity of American workers; [and] improvement in the work environment in American companies." The Director determined that the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance aspect of her proposed endeavor.

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. The Petitioner has provided evidence relating to the general human resources manager position and its role in the business sector, the importance of diversity and inclusion in the workplace, the importance of small businesses, the impact of the coronavirus on small businesses, and the positive effects of immigrants on the U.S. economy. The Petitioner must demonstrate, however, the national importance of her specific, proposed endeavor rather than the national importance of human resources management or the human resources manager position in a company or the wide range of fields or industries in which she intends to work. 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.

Throughout the record and on appeal, the Petitioner emphasizes her "vast experience," "extensive educational background and professional experience," and "extensive professional experience." The Petitioner's experience and abilities 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.

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. On appeal, the Petitioner reasserts that she "presented evidence and a detailed description that my venture has national importance and potential prospective impact, complying with Prong 1." Specifically, the Petitioner highlights recommendation letters from her colleague [redacted] and clients [redacted] the aforementioned business plans; and an expert opinion from [redacted], associate professor of marketing with [redacted] State University.[5] [redacted] a workplace safety engineer, worked with the Petitioner in implementing a state occupational health medical control program for several clients. [redacted] employed the Petitioner as a consultant on safety standards and accident prevention for her glass company. [redacted] employed the Petitioner to represent her window manufacturing company in a labor law dispute. The aforementioned letters of support, as well as others not discussed in this decision, detail the Petitioner's effectiveness and skills in her previous work as a labor lawyer in Brazil, but they do not address the national importance of her proposed endeavor.

Similarly, in offering his opinion regarding the national importance aspect of the Petitioner's proposed endeavor, [redacted] asserts that "the United States would greatly benefit from the expertise and skills of an experienced human resources specialist and legal adviser such as [the Petitioner], who has extensive knowledge and expertise in legal consulting and human resources in Brazil." As stated, 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 has not offered sufficient information and evidence to corroborate her assertions 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, the Petitioner's plans and supporting letters did not demonstrate, for instance, how her human resources management services stand to sufficiently extend beyond the businesses that might employ her, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

[5] On appeal, the Petitioner offers a letter of recommendation from [redacted] and an additional letter from [redacted] However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Furthermore, the Petitioner has not established 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. Although on appeal the Petitioner emphasizes that her endeavor "has strong potential to generate direct and indirect jobs for the American economy" as "[t]he future business intends to employ, at the end of the fifth year, 8 workers directly," the Petitioner's documentary evidence does not support her assertions; [redacted] does not mention any potential job numbers, and neither he nor the Petitioner demonstrates how her proposed endeavor would impact unemployment levels, or details any revenue benefits for national or regional areas. 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 human resources management position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor 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.[6]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated that 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.

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).