U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26081083

Date: MAY 1, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a lawyer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 Nebraska 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.

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. Section 203(b)(2)(B)(i) of the Act. 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

[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).

- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director's decision did not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability. Instead, the decision only addressed the Petitioner's eligibility for a national interest waiver. Therefore, the issue for consideration 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 conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[2]

With respect to her proposed endeavor, the Petitioner initially indicated that she intends to continue to work as a lawyer. She asserted that her "helpful guidance in the area of Brazilian law is indispensable for U.S. companies engaged in any cross-border projects. . . . Clients may include U.S. organizations doing business or planning to do business in Brazil." The Petitioner further stated that she plans "to work with law firms, businesses, or corporations to provide expert advice as a lawyer." She also explained that she will "provide legal advisory services to U.S. businesses and have the capacity to assist Latin American businesses planning to market in the U.S. through import/export and to those who want to establish a physical business location in the United States."

In response to the Director's request for evidence (RFE), the Petitioner asserted that her "proposed endeavor in the United States is to offer my specialized legal services in corporate law, legal compliance, tax law and labor law." She maintained that her "guidance in Brazilian laws is indispensable for U.S. companies engaged in any cross-border projects. I am able to provide my expertise on the implementation of domestic rules in Brazil and counsel clients in disputes related to their international business issues." The Petitioner further explained that her "[c]lients may include U.S. organizations doing business or planning to do business in Brazil and Latin America." In addition, she stated that she planned to "work with law firms, businesses, or corporations to provide expert advice as a lawyer" and to act as "a bridge between American and Brazilian companies, exporting or increasing their activities in Brazil in a more appropriate way."

The record includes information about corporate law and its purpose, the benefit of hiring a corporate lawyer, labor law, and contract law. In addition, the Petitioner provided articles discussing the adverse consequences associated with civil court closures, factors that make U.S. employment the worst in the developed world, a shortage of lawyers offering civil legal services in New Mexico, and New Mexico's proposed initiative aimed at allowing licensed legal technicians to address the state's unmet legal needs. She also submitted information about attorney regulation reform as a way to improve access to legal services, a scarcity of attorneys in rural areas of New York state, running a rural law practice in New York state, Washington state's usage of legal technicians to close the justice gap, and the number of lawyers per capita in the United States. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

[2] Because the Petitioner has not demonstrated her eligibility for a national interest waiver on appeal, we need not remand the decision for the Director to determine whether she qualifies for the underlying EB-2 visa classification.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not shown that her undertaking stands "to broadly impact the corporate law field" or otherwise offers "potential prospective impact" beyond her future employer.

In her appeal brief, the Petitioner argues that "the demand for legal services has outpaced the supply of lawyers, creating an acute talent shortage." We are not persuaded by the Petitioner's claim that her proposed endeavor has national importance due to the shortage of lawyers. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner also contends that her proposed endeavor is of national importance due to her "professional history" and "past achievements." She points to her "in-depth knowledge and experience in various aspects of the law," including "legal counseling in contract negotiation." The Petitioner's claims relating to her knowledge and record of success 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.

In addition, the Petitioner asserts that her undertaking offers "national implications in the field of corporate law and significant potential to employ U.S. workers." She further argues that her proposed work contributes "toward the advancement of U.S. businesses through key tax changes and implementations." The Petitioner also claims that her proposed endeavor stands to assist her clients through minimizing tax liabilities, reducing the cost of tax compliance, increased stability, increased profits, solving problematic situations and incidents, increasing operational efficiency, advancing business expansion, navigating complex tax and regulatory environments, managing the critical demands of internal clients, accurately deciphering and implementing the new complicated global tax system, providing proper legal advice and consulting in various scenarios, encouraging and attracting outside investors, and increasing the likelihood of long-term success. Furthermore, she contends that her undertaking will impact "the entire nation" and benefit "the U.S. economy entirely."

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.

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. While the Petitioner's statements reflect her intention to provide valuable legal services to her clients, she has not offered sufficient information and evidence to demonstrate 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, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her future U.S. employer or legal clientele to impact her field or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner 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. 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 regional or national economy resulting from the Petitioner's legal and business projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work 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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *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).

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. 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.