U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25672454

Date: MAY 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. 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. Section 203(b)(2)(i) of the Act. 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 although the Petitioner qualified as an advanced degree professional, she 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)(2) of the Act.

Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) 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 benefit the United States to waive the requirements of a job offer and thus of a labor certification.[1]

II. ANALYSIS

The Petitioner seeks to manage a business consultancy in the United States.[2] The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree but does not meet any of the three prongs of the *Dhanasar* test. On appeal, the Petitioner provides a brief contending that the Director did not use the correct standard of proof and failed to fully consider all the evidence provided. Upon review, the Petitioner has not established that she merits a discretionary national interest waiver of the job offer requirement.

The first prong of the *Dhanasar* test, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake and its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. The Director concluded that the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. An endeavor may have national importance if it has significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1).

The Petitioner's brief on appeal extensively discusses the importance of auditing and accounting in international business, but the relevant question in determining national importance is not the industry or profession where the Petitioner will work, but the specific endeavor and what economic, cultural, scientific, or other effects it would potentially have. *Id.*; *Dhanasar*, 26 I&N Dec. at 889-90. In this instance, the Petitioner has not provided a consistent account of the nature of her endeavor or supported her claims with sufficient relevant, probative evidence to show that the endeavor's impact would rise to the level of national importance.[3]

The professional plan the Petitioner submitted with her initial evidence stated that she would work as an auditor, "helping multinational U.S. companies, especially those companies moving into the Brazilian market . . . to detect problems, provide solutions, and optimize business results by educating executives in leading positions about the financial complexities of doing business in Brazil," including

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

[2] The Petitioner refers to herself as an auditor, but it is not apparent from the record that she has been or will be employed as an auditor. Her financial duties in her past medical administration positions consisted of managing accounts payable and receivable, preparing financial reports and statements, closing monthly billings, and calculating and passing on service fees. These do not resemble the duties of an auditor. *See* U.S. Bureau of Lab. Statistics, Accountants and Auditors, https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-2 (describing duties of auditors, such as checking for proper management of organization funds, sources of revenue, and internal financial controls and identifying process improvements to reduce waste, fraud, and other financial risks). We assess eligibility according to the Petitioner's actual proposed activities rather than stated job titles. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("In determining national importance, the officer's analysis should focus on what the beneficiary will be doing rather than the specific occupational classification.").

[3] When assessing a petitioner's claims under a preponderance of the evidence standard, we examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the given claim is probably true. *Matter of Chawathe*, 25 I&N Dec. at 375-76; *Matter of E-M-*, 20 I&N Dec. 77, 69-80 (Comm'r 1989).

"complex taxation systems of Brazil and other countries in Latin America." To describe the impact of her endeavor, she provided a list of the typical job duties of accountants and stated that the endeavor would generate tax revenue and jobs.

The initial evidence also included a non-binding employment agreement from [redacted] Company to hire her as a development assistant for $42,000 per year if her visa petition is approved. The duties of this position were not specified, and there was also no indication that [redacted] Company is a multinational company seeking to do business in Brazil. The Director issued a request for evidence (RFE) requesting, among other things, further documentation establishing that the Petitioner's endeavor would be of national importance.

In response to the RFE, the Petitioner provided a letter stating that her endeavor will be a consulting firm providing "financial and business strategy consulting, federal and state accreditation project for SME,[4] budget and financial accounting strategy planning project, and monthly financial and accounting services outsourcing planning." (*capitalization changed for readability*) The letter further states that by hiring workers, the proposed company will help the economies of "underserved business zones[] of several states across the United States." The RFE response also included the Petitioner's resume, a business plan, support letters, the Bureau of Labor Statistics description of the job duties of financial analysts, and various articles about the financial planning industry in the United States, the economic benefits of immigration, and labor shortages in the business and financial sectors. As previously noted, the Director concluded that the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance.

A petitioner must establish eligibility for the benefit sought at the time of filing. 8 C.F.R. § 103.2(b)(1). Therefore, petitioners 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. *Matter of Izummi*, 22 I&N Dec. 169, 175 (BIA 1988) (citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r. 1971)). The Petitioner's initial evidence did not mention the existence of her company, despite the fact that was incorporated in 2014,[5] and did not discuss employing other workers or operating in economically depressed areas. All of these assertions are central to the Petitioner's claim that her endeavor will have an economic impact of national importance, and as such, are material to the petition. Because the Petitioner made significant and material changes to her proposed endeavor in response to the Director's RFE, these new assertions cannot be used to establish her eligibility, and we decline to consider them. *Id.*

Furthermore, even if we were to accept the material changes the Petitioner made to her petition after the RFE, which we do not, the evidence provided still does not establish her endeavor's national importance. An endeavor may qualify if it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Dhanasar*, 26 I&N Dec. at 889; *see generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1). In the present case, as noted by the Director, the Petitioner has not established how her endeavor's impact would extend beyond her business's clients.

[4] The materials provided do not explain the meaning of "SME" in this context or specify what accreditation is being referred to.

[5] The Petitioner last entered the United States in 2014 with a B-2 nonimmigrant visa. It is not apparent from the evidence provided how long her company has been doing business.

The Petitioner's business plan states that the company will have four offices in Florida and Georgia HUBZone locations designated by the Small Business Administration[6] and provides examples of potential office locations. The HUBZone map key included in the plan indicates that some of the selected locations are expiring because they were designated as HUBZones due to being temporarily designated disaster areas. This does not establish that these locations are economically depressed.

The business plan further claims that after five years, the company will hire 17 workers (11 in Florida and six in Georgia) and lead to the creation of 22 indirect jobs. First, we note that the business plan states that seven of the 17 proposed employees will be employed on a half-time basis. Additionally, the projection of 22 indirect jobs created is based on "employment multipliers" developed by the Economic Policy Institute which state that every job in accounting, tax preparation, bookkeeping, and payroll services creates 1.33 indirect jobs. Notably, the only such employees mentioned in the business plan are two half-time accountants. The indirect job statistics therefore have limited evidentiary weight in this proceeding. *See Chawathe*, 25 I&N Dec. at 375-76; *Matter of E-M-*, 20 I&N Dec. at 79-80 (noting that we consider not only the quantity of evidence submitted by a petitioner, but also its quality, including its relevance, probative value, and credibility).

The state wage information provided in the business plan states that the Petitioner's employees will largely be paid the wages equal to the 25th percentile of salaries for workers in their occupations. First, it is noted that statewide wage statistics are not specific to the HUBZone locations stated in the business plan. Furthermore, it is not apparent from the information provided that hiring 17 workers in four locations at wages below the state median would offer those locations or their populations a substantial economic benefit. This also does not establish that the company will employ a significant population of workers in any of the areas where it will operate.

The business plan states that the company will earn $434,700 to $1,494,700 in revenues per year, but does not establish the significance of this economic impact in the context of the HUBZone areas where it will be located. It is also not apparent that the company's projects would represent a significant share of the Florida or U.S. business consulting market. The record does not establish that the proposed endeavor's economic impact would rise to the level of national importance.

On appeal, the Petitioner states that her endeavor will provide "substantial contributions in an area of national importance" by assisting in international business transactions,[7] stating that this would have national or global implications in the field as contemplated by *Dhanasar*. *Dhanasar*, 26 I&N Dec. at 889-890. However, *Dhanasar* provides examples of impact such as medical advances or improved manufacturing processes, in which an endeavor's innovations influence the rest of a field. *Id.* Simply working in the field of international business does not constitute such an innovation or establish that the Petitioner's endeavor would have such influence in business or finance as to be nationally important. Similarly, while we acknowledge the materials the Petitioner provided regarding shortages

[6] The HUBZone program provides preferential contracting consideration to businesses in "historically underutilized business zones," including economically depressed areas, qualified disaster areas, and areas where military installations were recently closed. *See generally* U.S. Small Bus. Admin., HUBZone program, https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program; 13 C.F.R. § 126.

[7] None of these potential transactions have been specifically identified in the record.

of skilled professionals in business and finance, the record does not establish how the Petitioner's endeavor, in and of itself, would resolve this shortage or impact it on a national level.

Additionally, the record does not contain sufficient probative, relevant documentation to support the business plan's claimed activities and projected finances. For example, the letter of support from J-C- of [redacted] an air conditioning repair company, states that the company contracted the Petitioner to work as their financial specialist, but there is no indication that this company conducts business in Brazil or that the Petitioner's work for them involves auditing or the kinds of specialized international business advising claimed throughout the petition. It is further noted that the letter from J-C- describes hiring the Petitioner as being an investor in the company, but the business plan states that the company will be funded solely by the Petitioner and her husband, with no outside investment. Where there are contradictions in the evidence, a petitioner must resolve these contradictions with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The Petitioner has not done so here. A business plan that was created after the time of filing and which is not supported by relevant, probative, and credible evidence does not establish eligibility.

The Petitioner's appeal brief emphasizes her credentials and extensive work history. However, these factors go towards the second prong of the *Dhanasar* test, which concerns the Petitioner's ability to advance to proposed endeavor. They do not establish that her endeavor, in and of itself, is likely to have substantial economic benefits or to have national or international implications in the fields of business consulting or finance. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1). The Petitioner has not demonstrated that her proposed endeavor has national importance.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the other two prongs and we hereby reserve them. *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). The burden of proof is on the Petitioner to establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here, and so the petition will remain denied.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.