U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28819622

Date: NOV. 13, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a legal and business consultant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 Nebraska Service Center denied the petition, concluding the record did not establish: (1) the national importance of the proposed endeavor; (2) the Petitioner is well positioned to carry out his endeavor; or (3) that it would be in the United States' interest to waive the requirement of a labor certification. 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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:

[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).

- 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 Director determined the Petitioner qualifies for the underlying EB-2 classification. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework.

The first prong, substantial merit and national importance, focuses on the specific endeavor 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.

The Director noted the Petitioner's endeavor, as initially presented, focused primarily upon providing legal consultation regarding Kazakhstan's laws and only briefly "mentioned activities like "real estate and other forms of conducting business in the USA from Kazakhstan." The Director observed that in response to the request for evidence (RFE), "[t]he [P]etitioner expand[ed] upon her initial endeavor, and it appears the [P]etitioner intends to provide legal consultation on Kazakhstan [l]aw, training on Kazakhstan [l]aw, initiating services to attract STEM specialists from Kazakhstan, and [finding] potential investors from Kazakhstan to invest in the [P]etitioner's new endeavor involving Zombie houses."[2]

The initially described endeavor together with the expanded portions from the RFE collectively indicate that the Petitioner's proposed endeavor is to create and operate her own business, which involves numerous activities including:

- Establish contacts with U.S. and Kazakhstani companies;
- Offer legal services for U.S. companies to conduct business in Kazakhstan and for Kazakhstani businesses to operate in the United States;
- Attract foreign direct investment to the United States from Kazakhstan and vice versa;
- Attract Kazakhstani buyers of abandoned U.S. real estate;
- Attract Kazakhstani Science, Technology, Engineering, and Mathematics (STEM) investors;
- Conduct workshops for U.S. business people;
- Offer presentations to lawyers regarding STEM programs;
- Provide consulting services to U.S. lawyers and businesses on Kazakhstani law;
- Create a database;
- Create a "KZ Guide" for STEM and lithium energy entities;
- Write, publish, and distribute a book; and

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[2] "Zombie" houses refer to abandoned real estate.

- Coordinate building reconstruction with contractors, subcontractors, architects, local government, real estate brokers, and zone inspectors to convert abandoned properties into affordable homes.

While we admire the Petitioner's numerous aspirations, we agree with the Director's conclusion that the Petitioner's RFE response significantly expanded the proposed endeavor. In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. at 889. Here, any single activity listed above could constitute a full-time job. Although the Petitioner's various activities do not necessarily conflict or contradict each other, we conclude she has not identified her endeavor with sufficient specificity. Rather, the Petitioner appears to have cobbled together multiple endeavors that she believes may lead to a favorable decision without offering a sufficiently coherent explanation of how these diverse activities will realistically fit together. It is not apparent how the Petitioner will allocate her time between these activities. The broader implications and impact of her proposed endeavor may differ depending on which activities the Petitioner prioritizes. Therefore, we conclude the proposed endeavor, as described, is overly expansive in scope such that it obfuscates the endeavor's impact and broader implications.

Even if we were to accept that such a broad range of activities comprise the Petitioner's single proposed endeavor, the record would not establish its national importance. One reason the Petitioner claims her endeavor is of national importance is that it will strengthen ties between the United States and Kazakhstan, enhance market access for both countries, expand economic prosperity, and optimize commercial opportunities. However, the Petitioner specifically stated that she will operate a small business. Therefore, while we acknowledge the Petitioner's assertions, we conclude she has not provided sufficient evidence to establish how her proposed endeavor will operate on such a scale as to impact these matters on a level commensurate with national importance.

For numerous reasons, the Director determined the Petitioner had not established the national importance of the proposed endeavor. For instance, the record did not support a finding that the proposed endeavor would have broader economic effects and did not show, beyond the Petitioner's assertion, that her work as a legal consultant, stands to sufficiently extend beyond the legal advising services she may provide to potential clientele. While the Petitioner's potential future individual clients may benefit from her services, she did not offer a sufficient explanation of how an individual benefit rises to the level of national importance or how it impacts the field of trade, law, or real estate more broadly. The Director agreed that legal services, investments, STEM, trade between Kazakhstan and the United States, and affordable housing are important to the economy and the United States government. Nevertheless, the Director concluded the record did not establish how the endeavor to provide legal consultation and business advice, in addition to real estate investments, would rise to the level of national importance.

Further, the Director explained that the Petitioner's evidence did not establish how her services, procedures, or techniques are unusual or novel, or that her practices, methods, or approaches will broadly impact relevant fields, such that it can be concluded that her proposed endeavor will have national importance. The record did not clarify how the Petitioner's specific endeavors in real estate development and legal consulting would directly impact national security, trade, or economic prosperity. Nor did the record indicate the Petitioner would directly create jobs or operate on such a scale that rises to a level of national importance. The Director acknowledged that any basic economic

activity has the potential to positively impact the economy, but concluded the Petitioner had not demonstrated how the potential economic activity of her specific endeavor stands to generate positive economic effects in the United States in a manner commensurate with national importance.

We agree with the Director's analysis and conclusions regarding the Petitioner's eligibility under the first Dhanasar prong. Below we offer additional analysis and address some of the Petitioner's appellate arguments. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

On appeal, the Petitioner contends the Director overlooked evidence. In support, she identifies specific pieces of evidence the Director did not discuss. However, when USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993). The Director analyzed the record in detail and summarized evidence and ideas for ease of explanation. We conclude that simply because the Director did not specifically discuss or list each individual letter, piece of evidence, or case cited does not mean the Director overlooked evidence.

The Petitioner asserts that when evaluating national interest waiver cases under the Dhanasar framework, "officers may consider the fact that many entrepreneurs do not follow traditional career paths and there is no single way in which an entrepreneurial start-up entity must be structured." 6 USCIS Policy Manual F.5 (D)(4), https://www.uscis.gov/policymanual. We acknowledge this policy and have applied it to fullest extent possible in this matter; however, this policy does not change the burden or standard of proof for entrepreneurial national interest waiver petitioners. All petitioners must support their assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Although the Petitioner references this portion of agency policy throughout her appellate brief, she does not analyze its connection to her evidence and assertions, but rather appears to assume that such a connection is self-evident.

Regarding the Petitioner's recommendation letters, we conclude they do not support a finding of the Petitioner's eligibility under the first Dhanasar prong. The authors discussed the results the Petitioner achieved for clients and how those results impacted individual businesses. The authors did not explain how the Petitioner's performance or the results she achieved extended beyond her clients and the specific parties involved to impact the field more broadly. For example, the opinion letter from [redacted] offers historical context for the significance of the Petitioner's accomplishments; however, we conclude that simply succeeding under difficult circumstances does not establish how the Petitioner contributed to the overall field. Furthermore, the letter does not explain the specific impact of the Petitioner's accomplishments.

[redacted] notes the value of legal consultants who have knowledge of Kazakh law but does not explain how the Petitioner's specific proposed endeavor has national importance. 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. Therefore, [redacted] discussion of

the importance of legal consultants, even those with knowledge of Kazakh law, is not necessarily sufficient to establish the importance of the proposed endeavor. Likewise, [redacted] appears to state the obvious: that when applications of Kazakh law are needed then knowledge of Kazakh law is demanded. Without an explanation of how frequently or to what extent cases arise where knowledge and application of Kazakh law is required, [redacted] offers little more than circular reasoning regarding the importance of foreign legal consultants. Further, [redacted] does not demonstrate any knowledge of the Petitioner's proposed endeavor. This brief sampling of letters is indicative of the whole and demonstrates that they are of little probative value in establishing the national importance of the proposed endeavor.

We reviewed the articles, reports, and government documents spanning topics such as entrepreneurs, small businesses, the monetary value and benefit of trade between the U.S. and Kazakhstan, and real estate. While these materials contribute to a finding that the endeavor has substantial merit, they are not necessarily sufficient to establish the national importance of the proposed endeavor. The Petitioner relies upon these materials to establish the endeavor's national importance without acknowledging that they do not analyze the national importance of the Petitioner's specific proposed endeavor. As explained, it is not sufficient to establish the importance of the profession or industry alone, but rather, the focus of the first Dhanasar prong relates to the national importance of the specific endeavor.

The Petitioner also cited numerous non-precedent AAO decisions for the purpose of demonstrating: (1) that the director must provide analysis of the evidence and not simply issue templated decisions; (2) instances in which other petitioners expanded upon or offered more detail about their proposed endeavors in RFE responses without materially changing their endeavors; (3) instances in which other petitioners have materially changed their endeavors; and (4) that the director erred in mentioning evidence not appearing in the record. While we acknowledge these decisions, they were not published as precedent and therefore they do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Furthermore, the Petitioner has not demonstrated with specificity how the facts and evidence in these cases are analogous to her own.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance under the Dhanasar's first prong. Because the Petitioner has not identified a sufficiently specific proposed endeavor, we cannot conclude that she meets the first prong or that she has established eligibility for a national interest waiver. Additionally, even if the Petitioner's endeavor were sufficiently specific, the evidence provided would not establish the national importance of the proposed endeavor, as explained in the Director's decision and in the analysis above.

III. CONCLUSION

The documentation in the record does not establish a specific proposed endeavor, nor does it establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Therefore, 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 would serve no meaningful purpose.[3]

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[3] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "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).