U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29356303

Date: JAN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a legal 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 that is attached to this EB-2 immigrant classification. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that, although the Petitioner demonstrated her eligibility for EB-2 classification as an advanced degree professional, she did not establish that a discretionary waiver of the job offer requirement 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. *See* section 203(b)(2)(B)(i) 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 Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. Accordingly, the sole issue to be addressed on appeal is whether the Petitioner has established that a waiver of job offer requirement, and thus a labor certification, would be in the national interest.

The Director concluded that the Petitioner demonstrated the substantial merit of her proposed endeavor and that she is well-positioned to advance it. However, the Director determined that the record did not demonstrate the proposed endeavor's national importance, and that, on balance, it would benefit the United States to waive the job offer requirement.

For the reasons provided 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 and therefore has not established that she merits, as a matter of discretion, a national interest waiver of the job offer requirement. While we do not discuss all evidentiary exhibits individually, we have reviewed and considered each one.

A. The Proposed Endeavor

The Petitioner has a bachelor's degree in law and completed a postgraduate specialization in tax law. The record reflects that she worked as a lawyer in Brazil, specializing in tax, civil, business, and environmental law, for approximately 15 years prior to coming to the United States.

The Petitioner described her proposed endeavor in a professional plan and a business plan and updated these documents in her responses to a request for evidence (RFE) and a notice of intent to deny (NOID). The Petitioner has consistently stated her intent to establish a Florida-based legal consulting firm that will offer services to foreign companies seeking to expand their operations to the U.S. market, and to U.S. companies seeking to expand their operations to Brazil and Latin American countries. She explains that her firm's primary service offerings will include (1) corporate business advisory services focused on contracts, permits, and licensing; (2) other legal consulting services with an emphasis on tax law; and (3) customs consulting and compliance services related to international trade activities.

[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).

B. Substantial Merit and National Importance

The first Dhanasar prong, 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner established the substantial merit of her proposed endeavor, but not its national importance. Specifically, the Director concluded that the record contained insufficient evidence to demonstrate that the proposed endeavor would have substantial positive economic effects, broader implications for the Petitioner's field, or other potential impacts commensurate with the national importance element of *Dhansar*'s first prong. The Director acknowledged evidence establishing the importance of the legal services industry, but noted that, in determining national importance, the relevant focus is not on the industry, field or profession in which the individual will work, but rather on the specific endeavor they propose to undertake. The Director also recognized the Petitioner's submission of evidence related to her past work in the field but emphasized that her professional experience and achievements are relevant under *Dhanasar*'s second prong and do not demonstrate how the proposed endeavor will be of national importance.

On appeal, the Petitioner contends that the Director's decision contains "erroneous conclusions of both law and fact" and is "not in accordance with the evidence provided or with the adjudicatory framework established by *Dhanasar*." The Petitioner asserts that the Director mischaracterized the relevance of letters provided by her past and present clients, noting that such letters contain examples of the "positive and national impact" of her work and are therefore relevant to her eligibility under the first prong of the *Dhanasar* framework. She maintains that the record demonstrates, by a preponderance of the evidence, that her proposed endeavor has both substantial prospective economic benefits and broader implications in her field.

The record includes media articles, government publications, and industry reports on the topics of the legal profession, the legal services industry in the United States, and the demand for skilled professionals in this field. In addition, the Petitioner provided articles and reports discussing the role of entrepreneurship in job creation and economic development, U.S.-Brazil economic and trade relations, the financial- and tax-related complexities of doing business in Brazil and Latin America, and the economic benefits of international trade and foreign direct investment in the United States. This evidence supports the Director's determination that the Petitioner's proposed endeavor to provide legal services to domestic and foreign businesses has substantial merit.

However, in evaluating 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" and its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. General claims about the growth of the legal services industry and the importance of trade between the United States and Brazil do not help establish that the Petitioner's specific endeavor has the potential to impact the U.S. economy, trade relations, or the legal field on a scale commensurate with national importance. Therefore, while we recognize the role of legal consultants in assisting businesses to enter new markets, minimize risks, and maximize their profitability, the Petitioner's

intent to work in this field alone is not sufficient to establish the national importance of her specific proposed endeavor.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890. As noted by the Director in the RFE and NOID, U.S. Citizenship and Immigrant Services (USCIS) will also consider evidence that a proposed endeavor will broadly enhance societal welfare, and evidence that it impacts a matter than a U.S. government entity has described as having national importance or is the subject of national initiatives.

As noted, the Petitioner provided a business plan that includes industry and market analyses, financial forecasts and projections, and a description of her legal consulting firm's proposed services and staffing. The business plan projects that the firm, which she intends to establish if granted lawful permanent residence in the United States, would hire 20 employees in the first five years of operations, generate cumulative revenues of $9.4 million, and pay over $930,000 in taxes by the end of its fifth year. The business plan also includes projections of indirect job creation based on a national job multiplier published by the Economic Policy Institute (EPI) for the "professional, technical and scientific services industry." Based on this multiplier, the business plan projects that the new firm's direct employment of 20 workers over five years would lead to the indirect creation of 83 additional jobs.

These direct job creation and revenue projections are not supported by details showing their basis or a sufficient explanation of how they will be realized. Regardless, the record does not support that the direct creation of 20 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. While we acknowledge the Petitioner's claims regarding indirect job creation attributed to her hiring plan, we note that the cited EPI figures are general statistics that apply to the broad industry sectors of "professional, scientific and technical services," rather than specifically to her proposed endeavor to establish a small legal consulting firm.

Therefore, while the Petitioner submitted industry data showing that the legal services industry is a high growth sector and a significant contributor to the U.S. economy, she has not demonstrated how a business that expects to hire 20 employees and generate $9 million over five years will have substantial positive economic effects on this sector, which, according to a submitted overview of the industry, generates over $300 billion in revenue and employs over 1.1 million workers. The Petitioner has not shown her endeavor has significant potential to employ U.S. workers or that the specific proposed endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

The Petitioner maintains that the economic impact of her proposed endeavor will derive not only from her direct employment of U.S. workers and contributions of tax revenue to the U.S. economy. She contends that her proposed activities will also have significant indirect benefits resulting from the

creation of new businesses in the United States, increased trade between the United States and Brazil, and creation of new revenue streams for existing U.S. companies. The Petitioner also states in her business plan that her proposed endeavor will result in widespread and substantial economic benefits throughout the United States, as it will spur job creation, increased tax revenues, a stronger supply chain, increased foreign direct investment, GDP growth, and national economic development.

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 any increased business activity has the potential to positively impact the economy on some level, the Petitioner has not demonstrated how the indirect economic benefits resulting from her firm's legal consulting activities would rise to the level of having regional or national economic impacts. The burden is on the Petitioner to establish that the economic effects of her proposed endeavor are "substantial."

We acknowledge that the Petitioner's updated business plan, submitted in response to the Director's NOID, included a section on "potential direct and indirect jobs from the client base in Brazil." The business plan indicates that four of the Petitioner's current and former Brazilian clients intend to invest in U.S. expansion activities and, collectively, have the potential to create 1,850 direct and 3,880 indirect jobs once established in the U.S. market. However, while the Petitioner submitted letters from three of these clients, those letters do not address the companies' projected U.S. expansion activities in any detail or otherwise corroborate or provide support for the job creation projections the Petitioner incorporated in her firm's latest business plan.

In considering the prospective economic effects of the Petitioner's proposed endeavor, we have also considered her claims regarding her past achievements as a lawyer and legal consultant. As noted by the Director, evidence of a petitioner's skills, expertise, and record of success generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [petitioner]" and whether they are well-positioned to advance it. *Dhanasar*, 26 I&N Dec. at 889. A determination regarding the claimed national importance of a specific proposed endeavor generally cannot be inferred based on the Petitioner's past achievements, just as it cannot be inferred based on general claims about the importance of a given field or industry. Nevertheless, a petitioner's achievements in the field may be relevant in some circumstances in establishing the potential prospective impact of their endeavor. *See id.*

The Petitioner submitted letters from her clients, who describe the specific services she provided and the positive impact of her work on their companies' revenue and growth. For example, R-C-, who operates nine franchised pet stores in the United States, states that the Petitioner provided him with legal advice that allowed him to avoid layoffs, store closures, and other potential losses during the Covid-19 pandemic. It is evident that the Petitioner's legal consulting services have been of significant value to the clients who provided references on her behalf. Some of these client reference letters contain general statements about the broader impacts of the Petitioner's work, but those assertions are less persuasive. In fact, many of the letters contain identical language when discussing the wide-ranging economic impacts of the Petitioner's activities, which undermines their probative value.[2]

[2] For example, several of the submitted client letters state that the Petitioner's "professional performance generates a solution for us entrepreneurs, turning the commercial wheel, and consequently, generating income for the American

Because the Petitioner does not describe - and the record does not contain sufficient probative evidence of - past achievements that have resulted in a broad impact on the legal field or substantial positive economic impacts, the Petitioner's general statements that her past achievements demonstrate the national importance of the proposed endeavor are insufficient to meet her burden of proof.

For all the reasons discussed above, the Petitioner does not offer a sufficient evidentiary basis for her assertion that the direct and indirect financial impacts of her proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See id.* at 890.

We have also considered the Petitioner's claims that her endeavor will have broader implications in the legal services industry and will improve the quality of legal services available in the United States. The Petitioner states in her business plan that she practices "Thought Leadership" and will share her knowledge with her company's employees, as well as "other professionals, clients, schools, local communities, [and] young graduates." She claims that her services will therefore reach "the highest levels of . . . dissemination." The Petitioner also asserts that by setting a high standard of service, she will "inspire other legal professionals to improve their own services, which can contribute to an overall improvement of legal services." Beyond these general statements, the Petitioner has not elaborated on her plans to disseminate her knowledge, skills, or methodologies for offering consulting services at a level that would have broader implications in the field. While the record supports a determination that the Petitioner is an experienced and successful lawyer and legal consultant, it does not offer sufficient corroboration for her claims that her proposed endeavor will provide a platform to influence the field, or otherwise have broader implications in the field commensurate with national importance.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a university professor in her field. In addressing the first prong of the *Dhanasar* framework, the author discusses the Brazilian economy and explains the current market challenges for foreign companies doing business in Brazil. The letter states that U.S. companies doing business or planning to do business in Brazil "would benefit from the expertise and skills" of the Petitioner, who has "extensive knowledge of the business environment and legal landscape in Brazil." The professor concludes that the Petitioner's work would be in an area of substantial merit and national importance, but does not address her business plan, the specific proposed endeavor, and its prospective potential impact. Rather, most of the letter's discussion of the first prong of the *Dhanasar* analysis simply provides background information about Brazil's economy, business, and trade environments.

We observe that 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, much of the content

government." Identical language in letters "suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content." *Hamal v. US. Dep't of Homeland Security*, No. 19-2534, slip op. at 8, n.3 (D.D.C. June 8, 2021).

of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons discussed, the Petitioner has not met her burden 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 prong cannot change the outcome of this appeal. Therefore, we reserve that issue and will dismiss the appeal as a matter of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the 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.

ORDER: The appeal is dismissed.