U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185409

Date: JUN. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 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 Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested national interest waiver. 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. 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 the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Once 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 qualified for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner established eligibility for a national interest waiver under the *Dhanasar* framework.

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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The Petitioner, an entrepreneur in cargo transportation and logistics, intended to open and operate a general cargo transportation and consulting company in the United States to "provide services in import and exports, supply chain, logistics, sales and operations planning, procurement, strategic sourcing, supplier, and contract management." The Petitioner planned to operate both in "the physical process of transporting cargo by road and providing consulting services to other U.S. companies." She asserted that her proposed business would "benefit numerous U.S. companies . . . [as it] is essential for companies to have an efficient and effective supply chain in order to stay competitive in the market, whether nationally or internationally." In support of her endeavor, the Petitioner submitted a personal statement outlining her plans to develop her business, multiple recommendation letters, an expert opinion letter, and several articles and industry reports discussing the importance of supply chain management and logistics in a company's growth and profitability, the growth of e-commerce and resulting increased demand in cargo transportation following the COVID-19 pandemic, the shortage of truck drivers, as well as the importance of entrepreneurship and small businesses to the U.S. regional and national economies. Relying on these general industry articles, the Petitioner asserted that her company would have "national and international implications, as her line of work allows for broad rippling effects throughout the economy and society."

In response to the Director's request for evidence (RFE), the Petitioner submitted a business plan for her company, along with additional industry reports and articles regarding the impact of increased employment on local economies and society, and the current state of the logistics industry in the United States. According to her business plan, the Petitioner's company would "support the [t]rucking industry, national and international trade, and the overall U.S. economy while prioritizing sustainability and environmental responsibility." Further, the business plan asserted that "[b]y

[1] *See Flores v. Garland,* 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

offering reliable and efficient freight transportation services, logistics consultancy, and transportation management software, the [c]ompany will facilitate seamless trade operations, ensuring the timely delivery of goods across the nation and beyond, [which would] contribute to the growth of businesses, job creation, and the overall economic prosperity of the United States." While the Petitioner initially planned to incorporate the company in the state of Florida, she also intended to open additional offices, within the first five years of operation, in Texas, California, South Dakota, and Maine so that the company could "decentralize its operations, ensuring faster and more personalized transport solutions while optimizing delivery routes and resources." In addition, the business plan provided a detailed description of the services the company planned to offer, which included cargo transportation, transport management, storage input, stock control, and logistic consultancy. Finally, according to the business plan, the company intended to license its software, SigX management system, which would allow its customers to determine optimal transportation routes to minimize the environmental impact of transport.

The Director concluded that, while the Petitioner established the substantial merit of her endeavor, the record did not demonstrate its national importance because the prospective impact of her endeavor would not sufficiently extend beyond her clients to lead to broader implications within the industry or field. Moreover, the Director concluded the Petitioner did not establish that her endeavor has significant potential to employ U.S. workers or otherwise result in substantial positive economic effects as contemplated in *Dhanasar*.

On appeal, the Petitioner contends that the Director did not properly consider the evidence on record and applied a higher standard of proof. As an example of the Director's asserted error, the Petitioner quotes the Director's conclusion that the record does not establish that her endeavor would "positively impact the logistics field beyond the benefits enjoyed by her immediate clients. . ." In response, rather than provide specific explanation as to *how* the Director erred in their interpretation of the record, the Petitioner relies on the same contentions previously put forth, for instance claiming that the endeavor does, in fact, have national and international implications "extend[ing] far beyond individuals and organizations she serves." The Petitioner also asserts the Director did not sufficiently evaluate the economic impact of her proposed endeavor, including her projected employment of U.S. workers. Additionally, the Petitioner asserts that her endeavor would broadly enhance society welfare and impact U.S. government initiatives.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we conclude the record establishes the substantial merit of the Petitioner's endeavor, but does not demonstrate, by a preponderance of the evidence, that the proposed endeavor of operating a cargo transportation and logistics consulting business would have national importance as contemplated under the *Dhanasar* analytical framework.

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We

therefore "look for broader implications" of the proposed endeavor, noting 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

At the outset we note that in her appellate brief, the Petitioner seems to assert that the Director mischaracterized her endeavor. The Petitioner states:

> [t]o be clear, [the Petitioner's] operation of a logistics services business is the means by which she will advance her proposed endeavor, *and not the endeavor itself.* As stated repeatedly throughout her petition, [the Petitioner's] proposed endeavor is to provide a wide range of services vital to commercial activity, business growth, supply chain management, and international trade and competitiveness in global markets. Her company will serve as the vehicle to pursue these objectives.

Notably, the Petitioner does not explain the significance of this distinction, and she directly contradicts her prior statements in the record. For example, in response to the Director's RFE, the Petitioner previously asserted, "as thoroughly explained in both her statements, her proposed endeavor *is to operate her already established U.S. company. . .*" Moreover, simply asserting goals and objectives is not sufficient for a Petitioner to meet their burden in establishing eligibility for a national interest waiver. Petitioners seeking this waiver must identify "the specific endeavor" that they propose to undertake. *Dhanasar* at 889; *see generally* 6 USCIS Policy Manual F.5(D)(1) ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation."). Moreover, this distinction between the Petitioner's company and the services she plans to provide does not overcome the Director's conclusion regarding the limited prospective impact of her proposed business plans.

The Petitioner repeatedly relies on the importance of the logistics and trucking industry both on appeal and before the director to establish what she asserts are the broad "ripple effects" that would result from her endeavor. The Petitioner stated that the Director erred in not considering the "aggregate importance or economic impact of the logistics filed" along with "all the evidence of the broad impacts of [the Petitioner's] endeavor" establishing its national importance. However, the Petitioner does not explain what impacts directly attributable to her endeavor the Director failed to consider. Moreover, the Petitioner asserts that, by helping companies working within critical infrastructure sectors, her endeavor would support essential procurement activities and therefore is in the national interest. Likewise, when asserting that her endeavor is in the national importance due to its impact on societal welfare and U.S. government initiatives, she relies on the government's interest in furthering a "strong, stable, and safe trucking workforce." Yet again, she does not provide specific ways in which her endeavor would broadly impact these initiatives, beyond the immediate benefits to her clients. When evaluating national importance, the relevant question is not the importance of the industry or profession in which the individual will work, or the customer base they plan to serve; instead, we must focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. While we recognize the importance of the trucking and logistics field, the record

does not establish that the prospective impact of the Petitioner's proposed endeavor stands to rise to the level of national importance.

Similarly, the submitted industry articles and reports do not alone establish the national importance of the Petitioner's endeavor. While the governmental interest in supporting the industry may establish the substantial merit of her endeavor, the Petitioner has not shown how her endeavor would meaningfully impact the industry. The Petitioner's statements reflect an intention to provide specialized services in the logistics field, in particular that her "work in these areas will result in more resilient, technologically advanced supply chains for U.S. firms. . . [and] will bolster U.S. competitiveness in consumer markets, generate cost efficiencies, and maximize customer values." However, she has not offered support for these assertions, nor does she sufficiently explain how the services offered to her clients would result in broader implications to the field. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). 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. Similarly, the Petitioner's offering services in the cargo transportation and logistics field does not establish that the proposed endeavor stands to result in broader implications at a level commensurate with national importance.

Moreover, the Petitioner further indicates that her company will utilize and license the route optimization software [redacted], which she states has been used by her company in Brazil to optimize trucking routes with the goal of reducing carbon emissions. The record does not contain an explanation or additional information discussing the prospective impact of such software, or if its use would result in broader implications to the field. In fact, it is not clear whether this proposed software would be used outside of the Petitioner's projected client base, and therefore, what impact, if any, it would have on a national level. As such, the Petitioner has not sufficiently demonstrated the prospective national impact of this software.

We also agree with the Director that the record does not establish the Petitioner's endeavor would result in significant economic benefits as contemplated in *Dhanasar*. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her proposed endeavor would rise to the level of national importance. In the business plan, the Petitioner indicated that by the fifth year of operations she anticipated generating total sales of $17,305,600 while employing 65 individuals, resulting in an annual payroll expense of $8,011,958. Notably, the Petitioner indicated that 50 of her 65 employees would be truck drivers, yet the Petitioner did not elaborate on how she intended to recruit 50 truck drivers in a five-year period given the stated shortage of truck drivers. Similarly, the business plan does not provide sufficient explanation for the basis of her financial projections. But even if the endeavor's revenue and job creation projections were sufficiently explained, they do not establish that her company would operate on a scale rising to the level of national importance. And, previously stated, the Petitioner has not explained how her proposed employment numbers and revenue would impact her company's area of intended operations.

Finally, we have also reviewed the provided expert opinion letter and the numerous recommendation letters, but that they also do not sufficiently establish the national importance of the Petitioner's

proposed endeavor. The expert opinion letter provides conclusory statements that seemingly could apply to the implementation of any new business, specifically, bringing more competition to the market and developing more job opportunities. While we recognize that this may be true, this does not establish the national importance of the Petitioner's specific endeavor. Likewise, the expert opinion primarily relies on the Petitioner's prior experience, without explaining how this would lead to broader implications from her endeavor. 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 noncitizen'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 of the expert opinion letter lacks relevance to the national importance of the Petitioner's proposed endeavor. And while we recognize the recommendation letters on record establish that the Petitioner "has extensive experience in the cargo transportation sector," is known as an innovator among her peers, and has had success with her company in Brazil, the testimonial evidence on record does not establish the national importance of her proposed endeavor. A petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.