U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29848405

Date: MAR. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the event planning and travel industry, 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.

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;

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature)..

- 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 an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has 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. *Id.* We agree with the Director's conclusion that the proposed endeavor has substantial merit as the endeavor falls within the range of areas we concluded could demonstrate an endeavor of substantial merit: business and entrepreneurialism. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not show it has national importance.

The Petitioner proposes to develop and operate her own business as a chief executive officer/entrepreneur in the field of event planning and tourism. Through this endeavor, the Petitioner plans to "delive[r] event planning and travel services [and] hel[p] U.S. companies tap into international trade gateway[s] for the U[.]S[.] market." She aspires to "bring to the U.S. the stream of international trade shows, conferences, and business visitors from Latin American companies . . . with the aim of being a bridge that will make new streams of international trade available to U.S. companies." In support, the Petitioner provided a definitive statement, a five-year business plan, recommendation letters from prior customers and others in the field attesting to her business acumen and success in Brazil, an expert opinion letter, and industry reports and articles detailing the economic importance of immigrants, entrepreneurs, small businesses, and the event planning and tourism industries.[2]

The Petitioner generally asserts that the Director did not apply the correct burden of proof and failed to properly consider the evidence on record establishing both her vast experience in the field well as the impact of her proposed business endeavor. Upon a de novo review of the record, we see no error in the Director's evaluation of the evidence as it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

While we recognize that the Petitioner has successfully operated her business in Brazil and has led the planning of business events across the world, 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.

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

Likewise, the expert opinion and industry articles may establish the overall economic importance of immigrants, entrepreneurs, small businesses, and the event planning/tourism industry to the U.S. economy, but the pertinent 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. Accordingly, the Petitioner's reliance on background information and statistics concerning entrepreneurs and business development generally is not persuasive.

According to the business plan, the Petitioner will primarily focus on three service lines: trade missions, corporate events, and incentive trips, with the latter accounting for approximately two thirds of the company's anticipated revenue. In response to the Director's request for evidence, the Petitioner asserted that this endeavor "presents national importance to the U.S., because of the ripple effects it generates upon commercial activities, the business industry, foreign direct investments, and ultimately the U.S. economy." The business plan claims that the company will also have a positive impact on the U.S. economy due to its anticipated revenue of $56 million, resulting in more than $2 million in tax revenue and 35 new jobs. However, the business plan provides no explanation for the basis of these projections and does not elaborate on how the proposed employment numbers will impact the area of intended operations. Even if the endeavor's revenue and job creation projections were more than conjecture, they do not establish that the endeavor would operate on a scale rising to the level of national importance. Beyond unsubstantiated tax revenue predictions, the Petitioner does not offer an evidentiary basis to conclude that the "ripple effects" of her proposed endeavor will affect the U.S. economy. While any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity of her proposed endeavor would rise to the level of national importance.

On appeal, the Petitioner also asserts that she has already "broadly impacted [the] travel, tourism, and business consulting industr[ies]," and "will create value for U.S. organizations" through her endeavor by providing advice to optimize their business functions. While the Petitioner's immediate clients may experience improved value from her offerings, this is not sufficient to establish the national importance of her endeavor. In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, activities which only benefit the Petitioner's clients, like the offerings outlined in the business plan, would not have broader implications in the field. *Id.*

Moreover, while we reviewed the expert opinion letter from Dr. V-L-, it provides little additional explanation to establish the national importance of the Petitioner's proposed endeavor. Dr. V-L- does not discuss the Petitioner's specific proposed endeavor or her business plan, and instead focuses primarily on the importance of immigrant entrepreneurs and the tourism and travel industries, with little discussion of how the Petitioner's proposed endeavor would impact either. 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 lacked relevance with respect to the national importance of the Petitioner's proposed endeavor.

Finally, the Petitioner's intention to base her company in a Small Business Administration HUBZone does not establish its national importance, despite her statements that they are "linked to a National Initiative and, therefore, of National Importance."[3] In *Dhanasar*, we explained 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 be considered to have national importance." *Dhanasar*, 26 I&N Dec. at 890. As the company is not yet formed and does not have a physical location, the Petitioner has not offered sufficient evidence that her business will in fact be in a HUBZone. Further, the Petitioner did not indicate that her endeavor would participate in the HUBZone program or that it would be eligible to do so.[4] More importantly, however, the record does not adequately establish that increased employment in these designated underutilized business zones would have positive economic effects commensurate with national importance. So, the fact that the Petitioner's proposed endeavor may be established in a HUBZone does not demonstrate that the Petitioner's endeavor is of national importance.

For all 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.

[3] While the Petitioner's business plan indicates that the company will initially incorporate in a Florida HUBZone, the business plan anticipates two additional offices in HUBZone locations in Texas and South Carolina in the first three years of its operation.

[4] There are several required qualifications to participate in the program, including that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. Here, the record does not establish that the Petitioner's business would qualify for the program.