U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35119927

Date: NOV. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial and investment analyst, 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 that the Petitioner was eligible for the requested national interest waiver. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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.

Id.

II. ANALYSIS

Upon de novo review, we conclude that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. Yet, for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical 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 record reflects the Petitioner intends to continue her career as a financial and investment analyst through the operation of her own consulting company, [redacted] which will offer financial solutions and management expertise to small and medium-sized business owners. According to the Petitioner's business plan, she intends to provide a variety of budgeting, forecasting, and financial planning services to her customers to resolve her customers' complex financial challenges and ensure their operational sustainability. Specifically, the company will specialize in five primary services: a financial dashboard tool, business planning, growth plans, market research, and finance management training. Ultimately, the Petitioner claimed that her business would result in growth for small business, increase employment rates, and improve the success of small and medium-sized businesses. Additionally, through her company the Petitioner stated that she intended to offer literacy courses to empower low-income individuals and foster financial literacy and entrepreneurship.

In support of her endeavor, the record contains a five-year business plan, letters of recommendation from colleagues commending the Petitioner's expertise in financial analysis and implementing complex business solutions, a personal definitive statement, and an expert opinion letter. Additionally, the Petitioner provided articles and industry reports discussing the financial and investment industry, solutions for the labor shortage in the banking and financial industry, as well as articles discussing the importance of immigrants and entrepreneurs to the U.S. economy.[2]

[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 is discretionary in nature).

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

Upon review of the record, the Director concluded that, while the Petitioner's endeavor was substantially meritorious, the evidence did not demonstrate the Petitioner's proposed endeavor has national importance. Specifically, the Director determined that the Petitioner had not shown that her consulting business would offer benefits that would impact the industry more broadly at a level commensurate with national importance. Moreover, the Director determined that she did not demonstrate there was a significant potential to employ U.S. workers or otherwise generate substantial positive economic effects contemplated in *Dhanasar*.

On appeal, the Petitioner generally claims 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. Notably, however, the Petitioner does not point to specific examples of how the Director erred in their analysis of the evidence. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding.[3] By presenting only general disagreement with the Director's decision, without identifying the specific aspects of the denial she considers to be incorrect, the Petitioner has failed to sufficiently identify the basis for her appeal.[4] Instead, she relies on the same arguments previously put forth and addressed by the Director, and maintains that the evidence was sufficient to demonstrate the national importance of her endeavor.

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 Petitioner has not established, by a preponderance of the evidence, that the proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

Notably, when discussing the national importance of her endeavor, the Petitioner focuses primarily on her education and past experience within the field, including a detailed account of the nature of her prior positions and ways in which she benefited her prior employers. Yet, while we recognize that the Petitioner has had a successful career, 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." *Dhanasar* at 890. The issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor.

Similarly, on appeal the Petitioner relies on the importance of the financial services sector, the financial analysis profession, as well as the importance of entrepreneurship in general to assert the national importance of her endeavor. However, while we agree that the evidence in the record regarding the importance of the industry and entrepreneurship demonstrates the substantial merit of her endeavor, the industry alone is not sufficient to establish its national importance. Instead, when evaluating national importance, we "look for broader implications" of the proposed endeavor. *Dhanasar* at 889. For example, in *Dhanasar* we noted that "[a]n undertaking may have national

[3] *See* 8 C.F.R. § 103.3(a)(1)(v).
[4] *Matter of Valencia*, 19 I&N Dec. 354, 354–55 (BIA 1986).

importance because it has national or even global implications within a particular field." *See Dhanasar*, 26 I&N Dec. at 889. 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.

Here, although the Petitioner claims on appeal that her company will create value or U.S. organizations, implement effective business processes allowing companies to remain resilient to economic downturns, and otherwise allow its customers to expand in their respective industries, the Petitioner has not shown that any direct benefits she provides to her customers would result in broader implications commensurate with national importance. She has not explained, for example, how the financial and management consulting services she intends to offer her customers would impact the industry at a level commensurate with national importance. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 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 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 customers, like the offerings outlined in her business plan, would not have broader implications in the field. *See Dhanasar* at 893.

We also conclude that, 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 company and its operations would rise to the level of national importance contemplated in *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890. First, we acknowledge the Petitioner's assertions that she intends to operate her business within cities designated as HUBZones by the Small Business Administration, but she has not explained how her prospective employment of U.S. workers in these designated underutilized business zones would have substantial positive economic effects commensurate with national importance. *Id.* In her business plan, the Petitioner indicated that by the fifth year of operations she anticipated generating annual revenue of $1,603,700 while employing 28 individuals, resulting in an annual payroll expense of $946,111. Notably, however, while the Petitioner indicated that the 28 employees will consist of various positions like sales managers, business analysts, marketing analysts, accountants, receptionists, and attorneys, the business plan does not provide sufficient explanation for the basis of these employment projections. And, beyond providing an anticipated cost of her services, the business plan also does not explain the basis for the financial projections. But even if the endeavor's revenue and job creation projections were sufficiently explained and supported, they do not establish that her company would operate on a scale rising to the level of national importance contemplated in *Dhanasar*, nor has the Petitioner explained how her proposed employment numbers and revenue would impact her company's areas of intended operations. So, the fact that the Petitioner's proposed endeavor may operate in HUBZones does not establish that the Petitioner's endeavor is of national importance.

The testimonial evidence in the record, including the expert opinion letter and the letters of recommendation, also provide little probative value in establishing the national importance of the Petitioner's endeavor. For instance, in the expert opinion letter from Dr. V-L-, they focus primarily on the Petitioner's background as well as the importance of her profession and the field to establish the national importance, but beyond general assertions regarding the invaluable guidance she could

provide her customers, Dr. V-L- does not explain how the Petitioner's specific endeavor would broadly impact the field or otherwise lead to substantial economic effects. 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). Similarly, as the letters of recommendation primarily focus on the Petitioner's past experience without addressing the prospective impact of her endeavor, the testimonial evidence in the record lacks relevance with respect to the national importance of the Petitioner's proposed endeavor.

For the reasons discussed, the Petitioner has not demonstrated that her proposed endeavor would be of national importance, and she therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, and therefore 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 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.