U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26967412

Date: JUN. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a supply chain specialist, seeks second preference 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 EB-2 immigrant 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 qualifies for EB-2 classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. In addition, the Director concluded that the Petitioner did not establish eligibility for a 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions.[1] *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

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

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[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

We will first address the threshold requirement that the Petitioner must qualify for classification under Section 203(b)(2)(B)(i) of the Act, as a member of the professions holding an advanced degree.[3]

The Director determined that while the Petitioner submitted a diploma of a bachelor's degree from University [redacted] in Venezuela, but he did not submit official academic transcripts according to the requirements of the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). The Director also found that the Petitioner, in the alternative, did not establish having the requisite five years of progressive post-baccalaureate experience in the specialty per 8 C.F.R. § 204.5(g)(1) which provides in pertinent part: "[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received."

The record demonstrates that in response to the Director's request for evidence (RFE), the Petitioner submitted an academic evaluation stating that her bachelor's degree from University [redacted] in Venezuela is foreign equivalent of a U.S. bachelor's degree in business administration. The Petitioner also submitted employment letters showing that she worked full time at [redacted] in the position of "senior purchaser planner" from March 2000 to March 2001 and then worked full time at [redacted] in Venezuela from March 2001 to March 2015 as a "procurement planning coordinator."

[3] The Director also determined that the Petitioner did not qualify as an individual of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner does not specifically contest this portion of the Director's decision on appeal and therefore, this amounts to the Petitioner's abandonment or waiver of this issue. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (when a respondent fails to substantially appeal an issue addressed in a decision, that issue is waived on appeal).

Considering the evidence in the record in totality, we conclude the Petitioner has established, more likely than not, that she possessed the foreign degree equivalent of a bachelor's degree, and at least five years of progressive post-baccalaureate experience in the specialty at the time of filing of the petition and is therefore eligible for the EB-2 classification as an advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(3)(i).

We now turn to the Petitioner's assertions that the Director erred in our determination that she did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of the *Dhanasar* framework. We agree with the Director's decision.

The Petitioner initially described her proposed endeavor as "[providing] substantial benefit for Critical Infrastructure within the U.S. either as a Supply Chain Consultant or specialist for private or public needs." The Petitioner did not directly state what her future work would entail or provide corroborating evidence of her specific endeavor. Instead, the Petitioner submitted various industry reports regarding the importance of the supply chain industry to the U.S. economy, current American supply chain disruptions, and labor shortage in the field. The Petitioner generally discussed the national importance of the industry and profession overall rather than demonstrating the national importance of continuing to serve her role in the supply chain industry. The Petitioner also contends on appeal that the Hurricane Ian's disruption of supply chain in Florida demonstrates a widespread need for supply chain professionals.

Regarding national importance, we focus on the "the specific endeavor that the foreign national proposes to undertake" and look to evidence documenting the "potential prospective impact" of her work. *See Dhanasar*, 26 I&N Dec. at 889. The relevant question is the importance of the Petitioner's specific proposed endeavor and not the importance of the industry or profession in which the individual will work. *Id.* Although we recognize the value of the supply chain professionals, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

In *Dhanasar,* we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* at 890. However, much of the evidence contained in the record shows the Petitioner's past accomplishments and recognitions from her former employers. The expert opinion from [redacted] merely reiterates the Petitioner's work experience and summarizes the contents of recommendation letters already on record. The Petitioner's knowledge, skills, and experience in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong. Here, the record lacks specific evidence of benefits and advances her proposed endeavor will make in the supply chain industry.

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.*

In response to the Director's RFE, the Petitioner submitted her professional plan stating that she will "develop her own venture in the U.S., as [redacted] a consulting services organization for the industry and small and medium business sectors." The Petitioner explained that she will offer her consulting services to companies "in the consolidation and management of cargo from and to any market in the world" and "engage in Supply Chain consultancy services as an entrepreneur for the benefit of public and private needs, where she is also planning train and prepare other related services professionals with personal secured funds."

The Petitioner claims on appeal that her company has significant potential to employ U.S. workers as it intends to hire both direct and indirect employees. Yet the Petitioner's professional plan does not include projections for generation of revenue or staff hiring to demonstrate that the benefits to the regional or national economy resulting from her business would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* The Petitioner must support her assertions raised in her professional plan with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The professional plan includes general analysis of the supply chain industry and its market, description of services to be provided, and a one-page "action plan and schedule." The action plan estimates the company's budget to be $15,000, then $50,000 for 2023 and $115,000 for 2024. The plan also anticipates "creation and establishment of the consulting company" as well as "marketing and sales strategies," "achievement of direct clients," and "design of didactic training material" to all occur in the first half of 2023. However, the record does not sufficiently detail the basis for its budget projections and timeline for business milestones or adequately support how these projections will be realized.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because the effects of his/her work are primarily limited to his/her school or district, we find that the Petitioner has not established her proposed endeavor in this case will sufficiently extend beyond her clientele to affect the regional or national economy more broadly. *See Dhanasar*, 26 I&N Dec. at 889.

In addition, the Petitioner cites to our non-precedent decision in *Matter of E-C-H*, ID# 77734 (AAO Dec. 27, 2016). In *E-C-H*, we found national importance in the petitioner's proposal to assist veterans as an entrepreneur. We stated that "the record demonstrates the immense value in improving programs and assisting organizations that provide support and advocacy for U.S. veterans and wounded warriors" and further determined that the petitioner's self-employment makes obtaining a labor certification impractical. The Petitioner suggests that we should similarly find national importance in her proposed endeavor as she is an entrepreneur and submitted a business plan as the petitioner did in *E-C-H*.

However, this decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Specifically, the petitioner in the non-precedent decision was not in the same field as that of the Petitioner and had submitted documents that were qualitatively different than those in this case. In addition, the section

of the decision that the Petitioner quotes on appeal refers to the third prong of *Dhanasar*. Thus, this non-precedent case does not support the Petitioner's claim of national importance for her proposed endeavor under the *Dhanasar*'s first prong.

Based on the reasons above, we find the record does not establish the Petitioner's proposed work is of national importance. Because the Petitioner has not met the first prong of the *Dhanasar*'s analytical framework, we decline to reach whether she meets the remainder of the second and third prongs under the *Dhanasar* framework. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Further analysis of her eligibility under the remaining prongs outlined in *Dhanasar* would serve no meaningful purpose. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.