U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28804324

Date: NOV. 07, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing manager and entrepreneur, 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). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate she merits a discretionary waiver of the job offer requirement 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 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree.[3] The issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of the classification's job offer requirement.

The Director concluded that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar framework. The Director further found that the Petitioner did not establish that she is well positioned to advance the proposed endeavor under *Dhanasar's* second prong, and 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 under *Dhanasar's* third prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[4]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant 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." Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to work as the chief executive officer for her new digital marketing consulting services business which she co-founded with her husband in Florida in 2020. The business plan indicates that the business provides market assessment studies, marketing event execution, digital marketing campaign services, marketing consulting outsourcing, and branding creation and promotion plan. The business plan explains that the business provides its services to start-up and small businesses

[2] 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).

[3] To demonstrate she is an advanced degree professional, the Petitioner submitted her diploma indicating she earned a bachelor's degree in advertising with minors in creativity and management from Universidad [redacted] in Dominican Republic on October 25, 2005; the corresponding academic transcript; an academic evaluation; and letters from her employers. The record demonstrates that she holds the foreign equivalent of a U.S. bachelor's degree in advertising and at least five years of progressive experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

in Florida and intends to provide its services and establish offices in [redacted] New York and [redacted] Michigan within five years. We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the record did not establish that "her proposed endeavor in this case stands to sufficiently extend beyond an organization or its clients, to impact the industry or field more broadly." The Director found that her "proposed work does not meet the national importance part of the first prong of the Dhanasar framework."[5]

The Petitioner contends on appeal that the Director "did not apply the proper standard of proof . . ., instead imposing a stricter standard, and erroneously applied the law . . . ." (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's resume explaining her experience; her business plan describing her credentials, professional experience, and the benefits she offers the United States; evidence of her contributions to the field; letters of recommendation; and industry reports and articles showing the national importance of her proposed endeavor and the shortage of workers in her field.

The standard of proof in this proceeding is a 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, we find the record does not demonstrate by a preponderance of the evidence that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar's* first prong.

On appeal, the Petitioner argues that her proposed endeavor has national importance, particularly because over a five year period it will create 23 direct new jobs for U.S. workers, pay wages of $2.2 million, and "boost local economies, specifically in the underserved business zones of several states across the United States." The Petitioner stresses her more than 20 years of professional experience "allow her to provide any U.S. firm or company more rapidly and efficiently with a competitive advantage," thereby making "contributions of major significance to the corporate industry in the [United States]." She relies on her entrepreneurial and marketing experience to argue, "Professionals such as [the Petitioner] are an essential component of the U.S. economic market;" accurately representing "American business values, and, in turn, have proved to constantly disrupt U.S. commercial markets, along with the nation's monetary production and global economic standing." (emphasis omitted).

However, the Petitioner's reliance on her professional experience and achievements to establish the national importance of her proposed endeavor is misplaced. Her professional experience and

[5] In considering the evidence, the Director did not review a second business plan submitted with the Petitioner's reply to a request for evidence stating, "[T]he Petitioner submitted a business plan dated December 2022; however, the plan postdates the Form I-140 petition priority date, 22 February 2011; therefore, it is inadmissible." Although we do not agree with the Director's inadmissibility of the new business plan since it further explains the Petitioner's proposed endeavor initially indicated in her petition, the new business plan is relatively the same as the first business plan submitted with the petition and the information in new business plan does not change our determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.

achievements relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. 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. See id. at 889.

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 the field more broadly. Id. at 893. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of marketing, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that the Petitioner's digital marketing consulting services business would impact the marketing field more broadly.

The Petitioner argues that her business plan shows her proposed endeavor has national importance based on potential economic benefits. The business plan explains that its main office will be located in an underutilized business zone in Florida and will expand within five years to underutilized business zones in [redacted] New York and in [redacted] Michigan. She asserts her business would generate jobs for U.S. workers in these underutilized business communities, improve wages and working conditions for U.S. citizens, and increase investment and economic development in local communities. The business plan also explains the business' ownership and investment; products and services with an industry analysis of its services; the marketing strategy; projected staffing; and financial forecasts. However, the record does not sufficiently document the potential prospective impact, including the asserted economic benefits to Florida and the United States.

The Petitioner has not provided corroborating evidence to support her claims that her business' activities stand to provide substantial economic benefits to the underutilized business areas of Florida, New York, Michigan, or the United States. The Petitioner's claims that her digital marketing consulting services business will benefit the Florida, New York, Michigan, or U.S. economies have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide economic benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as a co-owner and chief executive officer of her business would impact the marketing industry more broadly, rather than benefiting her business and her proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The business plan projects that in five years the business will create 23 direct jobs and 168 indirect jobs; pay wages of over $2.2 million; and generate over $6 million in revenue and over $300 thousand in federal income taxes. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence demonstrating that her business' future staffing levels and business activities stand to provide substantial economic benefits to Florida, New York, Michigan,

and the United States. While the Petitioner expresses her desire to contribute to the United States and its underutilized business areas, she has not established with specific, probative evidence that her endeavor will have broader implications in her field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in an economically underutilized business communities of Florida, New York, and Michigan. The Petitioner must support her assertions with relevant, probative, and credible evidence. See id. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 23 direct jobs and 168 indirect jobs; paying wages of over $2.2 million; and generating over $6 million in revenue and over $300 thousand in federal income taxes over a five-year period rises to the level of national importance.

The Petitioner further claims on appeal that the national importance of her proposed endeavor is evidenced in industry reports and articles. She argues that the reports and articles demonstrate the importance of marketing to the economic success of companies and the U.S. economic benefits of foreign direct investments and immigrant entrepreneurs. The record includes industry reports and articles relating to the importance of digital marketing to the growth of businesses; managing digital marketing returns, privacy, and climate impact; the effect of artificial intelligence on marketing for media companies; data analytics in marketing; expected marketing trends in 2025; shortage of qualified marketing professionals; digital marketing managers and consultants; and marketing consultants; and the economic benefits of immigrant workers and entrepreneurs.

We recognize the importance of the marketing industry and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the marketing field or starting a digital marketing consulting services business is insufficient to establish the national importance of the proposed endeavor. Instead, of focusing on the importance of an industry or a shortage of workers in an industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889.

We note that the record includes an expert opinion from [redacted], associate professor of marketing at [redacted] University. The opinion includes an analysis of the national importance of the Petitioner's proposed endeavor stating, "[The Petitioner] will work in an area of substantial merit and national importance." (emphasis omitted). The opinion explains the expected growth of job opportunities in the marketing field and that the Petitioner is qualified "to train and provide marketing insights for the international companies that plan to conduct business in the United States." However, the opinion's focus on the need for marketing professionals for foreign companies proposing to do business in the United States does not demonstrate that the Petitioner's specific endeavor may have a prospective impact in her field. The opinion does not focus on the Petitioner's specific endeavor and it having a potential prospective impact on the U.S. economy or in the field of her proposed endeavor. Simply stating that her work would support an important industry which is expected to have job growth is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

Also, the record does not indicate that the Petitioner's proposed endeavor includes doing business with foreign companies planning to do business in the United States. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm'r 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l,

19 I&N Dec. 791, 795 (Comm'r. 1988); 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).

The Petitioner does not demonstrate that her proposed endeavor extends beyond her business and her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the co-owner and chief executive officer of her proposed digital marketing consulting services business offers original innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed business' digital marketing consulting services work and the claimed economic results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments and her eligibility under *Dhanasar's* second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); 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 the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.