U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 28282465

Date: OCT. 3, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner is a marketing manager who 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualifies for the underlying EB-2 visa classification as an advanced degree professional, the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that her endeavor has national importance,[1] (2) did not demonstrate that she is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States. *Id.* The matter is now before us on appeal.

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 because the Petitioner did not establish that her proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 884. Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* 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).

In denying the petition, the Director pointed out that the Petitioner's specific endeavor, rather than the field or profession, is the focus when addressing the issue of national importance in the context of a

[1] The Director concluded that the Petitioner's endeavor has substantial merit.

national interest waiver. Despite acknowledging the national importance of the field of entrepreneurship, the Director determined that the Petitioner's endeavor to operate a startup marketing consultancy would not result in broad economic implications, such as having significant potential to employ U.S. workers, particularly in an economically depressed area. The Director also acknowledged the Petitioner's submission of a business plan and an intent to hire letter but found that neither demonstrates the endeavor's potential to create substantial positive impact for the regional or national economy. Rather, the Director highlighted the limited impact of the Petitioner's endeavor, noting that it would primarily benefit the Petitioner, her company, and her prospective clients. In sum, the Director concluded that the Petitioner did not demonstrate that her proposed would more broadly impact the region or nation such that would rise to the level of having national importance.

On appeal, the Petitioner provides a legal brief along with an evaluation of her credentials and articles about global and international marketing. However, neither the Petitioner's credentials nor the articles address her specific endeavor or establish that the endeavor has national importance.

In the legal brief, the Petitioner incorrectly refers to "the standard of national interest" and broadly argues that requiring "an immigrant to demonstrate 'global implications'" would cause detrimental impact to "immigration in the United States." As indicated in the Director's decision, to determine whether a petitioner merits a national interest waiver, we apply a three-prong analytical framework, where the first prong is comprised of two elements: substantial merit and national *importance*. *See Matter of Dhanasar* 26 I&N Dec. at 889. As previously noted, the Petitioner's endeavor was found to have substantial merit, but not national importance; despite the Petitioner's reference, there is no "national interest" standard.

We further note that no petitioner is required to demonstrate that their endeavor has "global implications," as claimed on appeal. While we consider "national or even global implications within a particular field" as one indicator of national importance, the key focus of the national importance element is an endeavor's "broader implications," which may be demonstrated even if that endeavor focuses on one geographic area. *Id.* In other words, as stated in *Dhanasar*, we do not focus on "the geographic breadth of the endeavor," but rather the breadth of an endeavor's implications. *Id.* In the matter at hand, we find that the Director correctly determined that the breadth of implications of the Petitioner's endeavor is limited to the Petitioner, her company, and her prospective clients. And although the Petitioner refers to "an established list that USCIS has included as requirement [sic] to the national importance criteria," she does not elaborate on the contents of such a list or establish that such a list exists. As stated above, we mentioned "national or even global implications within a particular field" as merely one indicator of national importance; nowhere, however, did we state in *Dhanasar* that this indicator is part of "an established list." Likewise, an endeavor's "significant potential to employ U.S. workers" or its potential for "other substantial positive economic effects" are also indicators of national importance, but like the national or global implications characteristic, these are not requirements under the *Dhanasar* framework. *Id.* at 890.

Lastly, the Petitioner vaguely states that the Director "has not implemented the right policy" and applied "the wrong standard without notice." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the

"preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that she has provided evidence sufficient to demonstrate her eligibility for the EB-2 classification and a national interest waiver, she does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying this petition.

In light of the evidentiary deficiencies discussed above, the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, thus leading us to conclude that the Petitioner has not demonstrated eligibility for a national interest waiver. Accordingly, we adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

**ORDER:** The appeal is dismissed.