U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21035236

Date: AUG. 10, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as an individual 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 the Petitioner qualified for classification as an individual of exceptional ability, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. 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) [Foreign nationals] 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.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.

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.

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.

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

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department 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).

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.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as an individual of exceptional ability. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner alleges on appeal that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, to [her] detriment." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests.[4] Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions.[5] While the Petitioner asserts on appeal that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor under the first prong of the *Dhanasar* analytical framework.[6] The Petitioner provided information about her proposed endeavor indicating that she "intends to provide U.S. companies, agencies and organizations with expert advice and managerial services in security, tactical security operations management, logistics, civil defense, military instruction, weapons, marksmanship, crisis management, and leadership." In August 2021, she incorporated a California business [L-] through which she plans to offer "security and self-defense services" to "individuals and legal entities of any size and from any region of the United States (and even abroad)."

The record contains articles about the security consulting field that highlight the ways in which law enforcement and private security firms benefit the United States, as well as an article entitled "What does a Security Consultant do?" This article explains, among other things, that "security consultants work as an advisor and supervisor for all security measures necessary to effectively protect a company or client's assets. Security consultants use their knowledge and expertise to assess possible security threats and breaches in order to prevent them and create contingency protocols and plans for when violations occur." The record therefore supports the Director's determination that the Petitioner's proposed work as a security consultant has substantial merit.

In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of her particular proposed endeavor. The Director explained that the Petitioner's evidence

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[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] *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).

[5] *See 1 USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual.

[6] The Petitioner submitted evidence to establish her eligibility for the benefit sought. While we may not discuss every document submitted, we have reviewed and considered each one.

did not show that her proposed work through the operation and management of her security consulting services firm would have broader implications at a level indicative of national importance.

On appeal, the Petitioner points to the business plan that she submitted in her response to the Director's request for evidence asserting:

> Although [she] may work for her own organization, her proposed endeavor is linked to national actions, particularly due to the prevalence, and influence, of criminal activity such as mass shootings in the United States, or in any other nation for that matter. In fact, [the Petitioner's] proposed endeavor prioritizes a topic of national concern. Her work directly addresses urgent matters regarding significant U.S. entities, such as the law enforcement sector and the criminal justice system – both of which are intertwined with national security tendencies.

In her appeal brief, the Petitioner avers that her proposed work "will contribute to the criminal justice system, which is failing to adequately identify the latest criminal trends." Petitioner also asserts that "[g]iven the ripple effects of her professional activities, her work functions will produce substantially positive results for the nation, which will enhance national security matters, and societal welfare in the U.S. as a whole." However, in addressing national importance in the first prong of the framework, the Dhanasar decision sets out that the focus is on the specific endeavor being proposed. As such, we do not consider the indirect consequences of a petitioner's activity when determining whether it is of national importance.

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. Although the Petitioner's statements reflect her intention to provide valuable security consulting and self-defense training services to her clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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 his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her business and future clientele to impact the financial management field or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. For example, the business plan asserts that the Petitioner will make an initial investment of $100,000 into L-. However, the Petitioner has not provided evidence of her $100,000 investment, nor has she provided an accounting of how this money will be allocated to cover L-'s start-up costs so that it may start marketing her firm's services to "individuals and legal entities of any size and from any region of the United States."

The business plan states that L- is to commence operations in 2022 and forecasts that L- will generate revenues exceeding $1,224,500 in its first year of operation, which will steadily climb each year to reach revenues of over $4,500,000 by the end of its fifth year of operation. The Petitioner estimates her business will create at least 69 jobs within this five-year timeframe. However, the plan does not

sufficiently detail the basis for the revenue and staffing projections, nor does it adequately explain how the revenue and staffing projections will be realized. Here, the Petitioner has not demonstrated that her business will impact the nation at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not shown that her company's future staffing levels would provide substantial economic benefits in California or the United States. While the Petitioner asserts that L- will hire 69 U.S. employees within five years, she has not offered sufficient evidence that the area where the company operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *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 conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.