U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28431928

Date: AUG. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a lawyer and entrepreneur 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 Texas Service Center denied the petition, concluding that 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. 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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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, 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

[1] *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).

- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director's decision does not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree and instead focuses on the Petitioner's eligibility for a national interest waiver.[2] Therefore, the issue before us on appeal 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. In discussing the first prong of the analytical framework set forth in *Dhanasar*, the Director concluded that the Petitioner did not establish that her endeavor has either substantial merit or national importance.

A. Substantial Merit

First, we will address the issue of substantial merit, which may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined that the merit of the Petitioner's proposed endeavor "lacks specificity and consistency" and therefore concluded that the Petitioner did not establish that her endeavor has substantial merit. We disagree.

The record contains several supporting statements from the Petitioner in which she consistently maintained that her proposed endeavor is to use her legal education and training to operate a law firm where she will serve as one of two managing partners, providing legal services to businesses of all sizes, as well as to individual clients. The Petitioner also provided a business plan in which she discussed her professional qualifications that will enable her to provide legal and managerial services, attract foreign investors to do business in the United States, and offer pro bono legal services to individuals in underdeveloped communities. In addition, the Petitioner provided articles discussing the role of immigrant entrepreneurs in driving economic growth in the pandemic recovery, the role of lawyers in stimulating the economy, and the underrepresentation of females in the legal profession.

We conclude that the record supports the Petitioner's claim that her proposed work as a lawyer and entrepreneur has substantial merit, and we therefore withdraw the Director's adverse conclusion on this issue.

B. National Importance

Notwithstanding our favorable determination on the issue of substantial merit, for the reasons to be discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

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[2] Although the denial does not address the issue of whether the Petitioner merits the EB-2 classification as an advanced degree professional, the Director made a favorable determination on this issue in the previously issued request for evidence (RFE). We also note that the record supports that prior finding based on the Petitioner's degree certificate and corresponding transcript from the [redacted] University School of Law. However, because the Petitioner has not demonstrated her eligibility for a national interest waiver on appeal, we need not remand this matter for the purpose of having the Director further address whether the Petitioner qualifies for the underlying EB-2 visa classification.

As noted above, the record contains a business plan which states that by offering "quality legal services to the American companies and population" the Petitioner's law firm will generate tax revenue and create a projected 42 jobs by its fifth year of operation, thereby strengthening the U.S. economy and the "law firm industry." The business plan states that the Petitioner seeks to "act in economic depressed areas and underdeveloped communities in Florida" and claims that the firm's chief contribution will be its "continuous and permanent generation of wealth for the [n]ation" by paying over $700,000 in taxes and investing over $1 million in a five-year period.[3] In a separate "definitive statement," the Petitioner discussed how she plans to use her legal expertise to assist clients and promote small business growth in historically underutilized business zones. She also claimed that her "strong reputation in Brazil" would allow her to secure "large clients in the U.S. market" and stated that her educational background and professional experience enabled her to negotiate commercial contracts, assist in conflict resolution in related transactional legal disputes, and gain "specialized knowledge of the laws related to the . . . fuels sector in Brazil." In addition, the Petitioner highlighted her experience with cryptocurrency, which she claims enables her to gain knowledge that is relevant to potential investors in this market.

In denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner did not establish a link between her proposed endeavor and the positive outcomes she claims her endeavor will generate, noting that the Petitioner did not provide corroborating evidence to support the growth projections in her business plan. The Director determined that the Petitioner has not shown that her undertaking has significant potential to employ U.S. workers or offer substantial positive economic effects for the nation, noting that the endeavor's hiring projections would not substantially impact a community with over six million residents. Lastly, the Director determined that no evidence was provided to demonstrate that the benefits of the proposed endeavor would broadly impact the entrepreneurship and legal industries, finding that the endeavor's impact would likely be limited to the clients the Petitioner's law firm would serve.

On appeal, the Petitioner asserts that in denying the petition, the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, the Petitioner does not point to specific examples of this within the Director's request for evidence (RFE) and denial. Importantly, the Petitioner also does not offer detailed analysis explaining the particular ways in which the Director "imposed novel substantive and evidentiary requirements" in denying the petition.

The Petitioner further alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the appellant." 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

[3] The record does not contain evidence that the Petitioner has either passed a U.S. bar or established a law firm. As such, there are no wage or financial documents to support the projections made in the Petitioner's business plan.

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 the petition.

In addressing the Director's adverse findings on the issue of national importance, the Petitioner reiterates the business plan's projections regarding revenue generation. However, she has not demonstrated how the claimed revenue projections in her business plan, even if credible, offer "substantial positive economic effects" for our nation that would reach the level of national importance as contemplated by *Dhanasar*. 26 I&N Dec. at 890. Likewise, the Petitioner has not demonstrated that the projected staffing levels, which includes 42 direct jobs and 210 indirect jobs, would more broadly impact Florida, the region, or the U.S. economy at a level commensurate with national importance. Further, 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. And although the Petitioner highlights her "business achievements and expertise throughout over five (5) years of work experience," these factors do not address the merits of the proposed endeavor, nor do they explain how the Petitioner's endeavor will have broader implications reaching beyond the clients her law firm will represent. In sum, the Petitioner makes no compelling arguments nor offers evidence to overcome the Director's analysis and conclusion regarding the national importance of her proposed endeavor. Accordingly, the Petitioner's proposed work does not meet the national importance portion of 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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *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).

ORDER: The appeal is dismissed.