U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24768970

Date: FEB. 8, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology project manager, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established 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. 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.

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

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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 noncitizen 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 noncitizen. 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 noncitizen's qualifications or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen's contributions; and whether the national interest in the noncitizen'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.[2]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan "to provide best practices in project management based on my knowledge and experience." She further stated that her "priority in working in the United States is to help companies that need support for their projects, companies that are unaware of management needs on projects, companies that failed on their projects, and even companies that have not yet identified opportunities for projects." Although the Petitioner provided examples of prior employers and projects she managed, she did not elaborate on any particular employer for whom she intended to work or project she intended to manage. The Director informed

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

the Petitioner in a notice of intent to deny (NOID) that her "proposed endeavor lacks sufficient specificity. The [P]etitioner went into great detail to describe her past experiences; however, she did not describe her proposed endeavor in detail. It is not clear what the [P]etitioner will be doing as a[n] IT Project Manager."

In response to the Director's NOID, the Petitioner submitted an updated professional plan, stating that she currently works as a consultant and project manager for "a Virginia-based company with over 10 years of experience in data center construction, and its main client is Amazon," and that she "was hired in 2020" for that position. The Petitioner further stated that, at the end of 2021, she "opened my own consulting company . . . because the job offers, and consulting requests are constant." She asserted that she "contribut[es] to the country directly, through my own company, by providing consulting services for IT projects, promoting business development, and paying taxes to the state of Florida and to the country."

In the decision, the Director noted that "the [P]etitioner did not reveal to USCIS in her initial filing of her intentions to start her own consulting business." The Director found that "the [P]etitioner has made a change to her proposed endeavor" and noted, "The Petitioner, however, must establish eligibility at the time of filing," citing 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). *See also* 8 C.F.R. § 103.2(b)(1). The Director further noted that the Petitioner discussed client solicitations in her NOID response but that she did not provide corroborating evidence of her potential clients' interest in response to the NOID. The Director also found that, even if the record established that potential clients are interested in contracting her for project management, "The [P]etitioner has not demonstrated how client solicitations or offers for her services are of national importance." The Director acknowledged that the Petitioner stated that she intended "to build a team of professionals to help me" but found that she did not establish the numbers of workers she intended to employ and the wages she intended to pay her employees "to show that her proposed endeavor will have a significant economic impact." Setting aside the Petitioner's consulting company, the Director discussed information in the record regarding the Petitioner's project management work for the Virginia-based company, but found that it did not establish that her proposed endeavor of project management has national importance.

On appeal, the Petitioner first asserts that she "never changed her Proposed Endeavor of working as an I.T. Project Manager. On the contrary, Petitioner only mentioned the intention to continue her work as an I.T. Project Manager through her company because USCIS required that she 'describes her proposed endeavor in detail.'" The Petitioner also states on appeal that she "mentioned her company in Florida because this is how Petitioner has worked as an I.T. Project Manager since she was given temporary work authorization."

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. at 49. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

As the Director discussed, the Petitioner materially changed her proposed endeavor in response to the NOID. As noted above, the Petitioner's initial professional plan "did not describe her proposed endeavor in detail." However, the Petitioner's updated professional plan submitted in response to the NOID asserted both that the Petitioner founded her consulting "[a]t the end of 2021," after the petition filing date in January 2020 and that she did so "because the job offers and consulting requests are constant," not because founding her own project management consulting company was part of her initial proposed endeavor. Whether the proposed endeavor would entail providing project management services as an employee or freelance worker for one or more companies, or whether the proposed endeavor would entail founding a company and employing workers is material to the first *Dhanasar* prong, which includes factors such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90. Because the Petitioner founded her project management consulting company after the petition filing date, without stating in her initial professional plan that she intended to found a project management consulting company; because she stated in her updated professional plan that she did so because of job offers and consulting requests at that time, not because she had already intended to do so; and because whether the proposed endeavor would entail working as an employee or founding and employing workers is material to the first *Dhanasar* prong, the Petitioner materially changed her proposed endeavor. We need not address the merits of the Petitioner's project management consulting company or any information provided by former, current, or prospective clients of that company further because it cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Additionally, the record does not support the Petitioner's assertions on appeal that her project management consulting company, founded in 2021, is how she has worked as an information technology project manager. In the same updated professional plan in which the Petitioner first stated that she founded her project management consulting company, she also stated that she was hired in 2020 for her position at the Virginia-based data center construction company. Therefore, the record establishes that the Petitioner was already working as an information technology project manager in the United States before she founded her project management consulting company. The Petitioner's inconsistent statements on appeal about the auspices under which she has worked as a project manager cast doubt on the credibility of her statements on appeal, which in turn undermines the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Setting aside the Petitioner's consulting company, the Petitioner asserts on appeal that her proposed endeavor "has national importance because she intends to continue working in a STEM field, which has been recognized as of national importance by the federal government." The Petitioner also notes that her degree in computer science and field in information technology management "are on the list published by the Department of Homeland Security (DHS) as the 'DHS STEM Designated Degree Program List.'" The Petitioner references a White House press statement, which in turn references a USCIS Policy Alert, both dated January 21, 2022, regarding a USCIS Policy Manual update.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first

prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner's assertion that her proposed endeavor "has national importance because she intends to continue working in a STEM field" is misplaced. "With respect to the first [*Dhanasar*] prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance." See 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. A STEM endeavor that is not indicative of an impact in the particular field of STEM more broadly would not establish its national importance. *See id.* Specifically, an information technology project management endeavor that is not indicative of an impact in the field of information technology project management more broadly would not establish its national importance. *See id.* Therefore, whether the proposed endeavor is in a STEM field or is listed on the DHS STEM Designated Degree Program List are not dispositive—the Petitioner must still establish that the proposed endeavor would have an impact in the field of STEM more broadly or have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See id.*; *see also Dhanasar*, 26 I&N Dec. at 889-90.

The Petitioner also states on appeal that her proposed endeavor "has national and even global implications within a particular field" because "I.T. Project Management is essential for American companies and the U.S. economy overall" and it "will continue to help American companies to deal with the consequences of the downturn caused by the Covid-19 Pandemic." The Petitioner further asserts that her proposed endeavor "has national importance because it is not limited to a particular state in the U.S." and that her endeavor "can benefit more than one American company simultaneously rather than benefitting a single employer." The Petitioner also references a recommendation letter from a client of her consulting service. However, the Petitioner does not elaborate on appeal how the Director may have erred in concluding that the record does not establish how the Petitioner's employment at the Virginia-based data center construction company has national importance.

As addressed above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. The statement that information technology project management is essential for American companies does not address how the specific endeavor the Petitioner proposes to undertake has "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. In turn, the Petitioner's reference to "the consequences of the downturn caused by the Covid-19 Pandemic" is misplaced. The Petitioner filed the petition in January 2020, before the World Health Organization declared COVID-19 a pandemic, and before economic downturn resulting from the pandemic. *See, e.g.,* U.S. Centers for Disease Control and Prevention, *CDC Museum COVID-19 Timeline*, https://www.cdc.gov/museum/timeline/covid19.html. Because the Petitioner filed the petition before the declaration of COVID-19 as a pandemic and the economic downturn resulting from the pandemic, this presents a new set of facts that cannot establish eligibility, as discussed above. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N

Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Similarly, the Petitioner's reference on appeal to her project management consulting company's ability to contract with companies in multiple states and benefit multiple clients simultaneously also cannot establish eligibility for the reasons discussed above. *See id.* Likewise, the recommendation letter from a client of the Petitioner's consulting company, founded after the petition filing date and constituting a material change in her proposed endeavor, cannot establish eligibility for the reasons discussed above. *See id.*

Finally, the record indicates that the Petitioner's work as a consultant and project manager for the Virginia-based data center construction company will benefit her employer and its clients and customers. However, the record does not establish how that employment will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or otherwise have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at. at 889-90.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.