U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24844887

Date: MAR. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources (HR) manager, seeks classification as a member of the professions holding an advanced degree. *See* 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. 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 record did not establish that the Petitioner qualifies for a national interest waiver. 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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates EB-2 eligibility, 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 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
- On balance, waiving the job offer requirement would benefit the United States.

II. ADVANCED DEGREE PROFESSIONAL

The Petitioner worked in Brazil as a traffic psychologist and as an HR analyst until she entered the United States in May 2015. She was still in the United States when she filed the petition on December 2019. Shortly after she filed the petition, the Petitioner established a limited liability company in Florida, intending to provide human resources management services to small businesses.

In the denial notice, the Director only addressed the national interest waiver, and not the underlying question of whether the Petitioner qualifies for the underlying EB-2 classification. For the reasons below, we conclude that the Petitioner has not established eligibility for the classification.

The Petitioner does not claim to qualify for classification as an individual of exceptional ability, and she does not claim to hold an actual advanced degree. Instead, when she filed the petition, she asserted that she is a member of the professions who holds the equivalent of a master's degree in the form of a bachelor's degree and five years of progressive post-baccalaureate experience. The record, however, does not support this assertion.

The Petitioner earned a degree in psychology from [redacted] in Brazil in June 2009. An evaluation in the record indicates that this degree is equivalent to a baccalaureate degree from a U.S. institution. The Petitioner entered the United States in May 2015 as a B-2 nonimmigrant visitor, and the record does not show that she was ever authorized to work in the United States before she filed the petition in December 2019. Therefore, it appears that the Petitioner had slightly less than six years in Brazil, from June 2009 to May 2015, to accumulate five years of progressive post-baccalaureate experience in the specialty of HR management. The Petitioner claimed "more than 10 years of experience in the field," but she did not document that much experience. The Petitioner's résumé lists the following periods of employment in Brazil, corroborated by employers' letters:

- HR Trainee and Analyst, 2/5/2007–8/5/2010 (42 months);
- Traffic Psychologist, 8/9/2010–3/2/2012 (less than 19 months); and
- HR Analyst, 10/15/2012–8/25/2014 (over 22 months).

The above periods of employment add up to about six years and nine months, but they do not amount to six years and nine months of progressive post-baccalaureate experience in the specialty of HR management in which the Petitioner seeks employment.

[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).

The Petitioner has not shown that her work as a traffic psychologist at a psychology clinic from 2010 to 2012 was in the specialty of HR management. Rather, her employer's letter indicates the Petitioner "performed psychological evaluation . . . in order to analyze the cognitive capacity, attention deficit and psychomotricity of first-time applicants, renewal and traffic instructors."[2]

Even if the Petitioner had shown that her work at the psychology clinic constitutes experience in the specialty of HR management, she has not documented at least five years of post-baccalaureate experience. The Petitioner's first two years and four months of employment, from February 2007 to June 2009, predate completion of her degree and therefore this experience was not post-baccalaureate.

The Petitioner has documented only about four years and five months of post-baccalaureate employment experience, from June 2009 to March 2012 and from October 2012 to August 2014. Only about three years of that post-baccalaureate experience was demonstrably in HR rather than psychology. The Petitioner has not established the minimum of five years of progressive post-baccalaureate experience in the specialty required by 8 C.F.R. § 204.5(k)(3)(i)(B).

This determination, by itself, precludes approval of the petition. But because the Director's decision did not address this issue, we will also discuss the stated grounds for denial of the petition below.

III. NATIONAL INTEREST WAIVER

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.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *See Matter of Dhanasar*, 26 I&N Dec. at 889.

When she filed the petition, the Petitioner stated that her company "will participate in HR consulting services for small and medium sized enterprises" and "develop a strategy for the Recruitment and Selection sector." The Petitioner asserted that her proposed endeavor is of national importance because "[e]xperienced HR professionals . . . are vital to the overall growth and development of small businesses in the U.S.," which make up "99.9% of all United States Businesses."

The Director issued a notice of intent to deny the petition, stating that the Petitioner had not established that her proposed endeavor has the broad implications described in *Dhanasar*. In response, the Petitioner stated that her "proposed endeavor has significant potential to employ U.S. workers," because her business plan projects a staff of 12 employees by the fifth year. The Petitioner also states that she "will . . . help other businesses hire more employees," by "ensur[ing] that businesses are able to fill their vacant positions" and "improv[ing] employee retention." The Petitioner submitted articles about the HR field, small businesses, labor shortages, and related topics.

[2] The Petitioner submitted information explaining how a degree in psychology can be helpful in the HR field. The relevance of a psychology degree to HR management, however, does not establish that psychology and HR management are the same "specialty" as 8 C.F.R. § 204.5(k)(3)(i)(B) requires.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance. *Matter of Dhanasar*, 26 I&N Dec. 889-890.

General information about the Petitioner's occupation and statistics about small businesses and labor shortages does not establish the national importance of the Petitioner's specific proposed endeavor. For instance, the Petitioner's evidence indicates that there are more than 30 million small businesses in the United States, but only a few of those businesses would be clients of the Petitioner's company. The record indicates there are about 300,000 HR managers in the United States. Their aggregate impact does not establish the national importance of the proposed endeavor.

We must consider the proportional impact of the Petitioner's work in particular. By comparison, in *Dhanasar* we acknowledged the petitioner's intention to teach engineering classes, but we concluded that the petitioner had not shown that his teaching work would "impact the field . . . more broadly." *Id.* at 893.

Ultimately, the issue is not whether the Petitioner's clients would benefit from her services. The issue is whether the proposed endeavor has "broader implications" with "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 889-90. Limited local effects may be of great benefit to the Petitioner's own clients, but still lack national importance. For example, the Petitioner asserted that "the impact she will have on work culture and employee satisfaction will continue to shift how companies perceive their actions," but the Petitioner did not show how her work will have this effect outside of the limited number of companies that engage her services.

The Director denied the petition, stating that the Petitioner did not "explain and demonstrate how [her] proposed endeavor will extend beyond the organization and its clients to impact the industry or field more broadly."

On appeal, the Petitioner asserts that she had established that her proposed endeavor "will have a direct, critical effect on the Human Resources Industry by revolutionizing how businesses handle internal affairs, the interview process, and retention," because her "background in psychology allows her to deeply understand human behaviors and interactions." The Petitioner had previously submitted evidence indicating that it is not unusual for HR managers to have a background in psychology. For instance, she had submitted a printout from Indeed.com entitled "FAQ: Human Resources Jobs With a Psychology Degree." The suitability of the Petitioner's degree for the proposed endeavor would be considered in the context of the second *Dhanasar* prong, concerning whether she is well-positioned to advance the proposed endeavor.

The Petitioner's business plan specifies that the Petitioner is not proposing practices or policies that can be widely implemented by a large number of businesses. Rather, her company "will provide a set of comprehensive services specifically adapted to each client's specific business needs." Individually tailored services may help the Petitioner to serve the specific needs of each client, but, by nature, they do not represent broadly-applicable measures that a wide range of employers can readily adopt. Also,

the Petitioner has not explained how her methods would be disseminated so widely that they would have a nationally significant economic impact.

The Petitioner notes that USCIS has updated its guidance for entrepreneurs seeking the national interest waiver. The Petitioner does not quote from this guidance. The updated policy does not establish a different evidentiary standard for entrepreneurs. Rather, it acknowledges that "[t]here may be unique aspects of evidence submitted by an entrepreneurial petitioner," which adjudicators should take into account while still adhering to the *Dhanasar* framework. *See generally* 6 *USCIS Policy Manual*, F.5(D)(4), https://www.uscis.gov/policy-manual.

The Petitioner states that USCIS did not give enough weight to an "Expert Letter" from a professor at [redacted] University. USCIS may rely on such letters in its discretion, but USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). The letter does not introduce new facts into the record; rather, the professor described record evidence and concluded that the Petitioner is eligible for the national interest waiver. The discussion of national importance includes general, industry-wide statistics, descriptions of HR procedures, and an overview of the proposed endeavor, without explaining how the benefit from the Petitioner's work would extend beyond her own clients to reach national importance and meet the requirements of the first *Dhanasar* prong.

The Petitioner asserts that her business plan outlined the economic benefit from her proposed endeavor. In terms of job creation, the Petitioner's business plan cites "national job multipliers published by the Econom[ic] Policy Institute" (EPI), indicating that "100 direct jobs in the Management, scientific, and technical consulting services . . . generate a total of 207.6 indirect jobs." Citing these figures, the business plan states: "Since [the Petitioner] will create 12 direct jobs by the end of 2026/27, the total indirect jobs . . . would reach 24." Separately from the EPI figures, the business plan indicates that the Regional Input-Output Modeling System (RIMS II) multipliers for "Management consulting services" in Florida project "a final-demand impact in employment, equivalent to 233 jobs in Year 7." The Petitioner did not submit the multiplier evidence itself or show that her proposed endeavor falls under the categories named. The Petitioner did not address or explain the significant discrepancy between the EPI and RIMS II figures. Also, modeled projections of indirect jobs do not show that the proposed endeavor itself "has significant potential to employ U.S. workers" as the Petitioner asserts, because the indirect jobs would be outside the Petitioner's company.

We agree with the Director's conclusion that the Petitioner has not met her burden to establish the national importance of her proposed endeavor.

IV. CONCLUSION

The Petitioner has not met the required "national importance" element of the first prong of the *Dhanasar* analytical framework. We therefore conclude as a matter of discretion that she has not established eligibility for a national interest waiver. Also, as noted above, the Petitioner has not established eligibility for the underlying EB-2 classification. Because these issues determine the outcome of the Petitioner's appeal, we reserve the appellate arguments regarding the remaining issue of the 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).

ORDER: The appeal is dismissed.