U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25956406

Date: MAY 1, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a vocational training and career development specialist in the employment services industry, 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 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 the Petitioner's proposed endeavor to work as a vocational training and career development specialist is of national importance and 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 matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Director did not properly consider every piece of evidence submitted and made an erroneous conclusion of fact. The Petitioner also contends that the Director did not apply the proper standard of proof, imposing a stricter standard than the preponderance of the evidence standard, and erroneously applied the law to her case.

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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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[2], 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. ANALYSIS

The Petitioner proposed to work as a vocational training and career development specialist for U.S. companies, learning institutions, organizations, or agencies. In 2001, the Petitioner obtained a bachelor's degree in administration from [redacted] University [redacted] in Brazil. From 2002 to 2007, the Petitioner worked as a social responsibility project coordinator at [redacted] and at the institution supported by the foundation for sustainable integrated development and growth projects. From 2009 to 2010, the Petitioner worked as the administrator of [redacted] From 2010 to 2014, the Petitioner worked as the administrator of [redacted] From 2014 to 2015, the Petitioner worked as a personnel, organization, and social responsibility leader at [redacted] The Petitioner has been a self-employed career coach since 2016. The Petitioner claims that she is the director and president of to [redacted] a business entity formed in Brazil in 2019 to provide professional training, managerial development services, business management consulting services, and educational support.

The Director determined that the Petitioner is eligible for EB-2 immigrant classification as a member of the professions holding an advanced degree based on the foreign equivalent degree of a U.S. bachelor's degree in administration and five years of progressive experience in her specialty. We agree. The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification's job offer requirement. We conclude that she is not.

The first prong of the *Dhanasar* analytical framework, 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,

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.
[2] *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).

health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director acknowledged the receipt of industry reports and articles, which demonstrate the value of vocational training, coaching, and career development for U.S. companies and learning institutions. Based on these reports and articles, the Director determined that the Petitioner's proposed work as a vocational training and career development specialist has substantial merit. We agree.

With respect to the national importance of the Petitioner's proposed endeavor, the Director found that the Petitioner's professional plan and statements, resume, support letters, industry reports and articles, an expert opinion letter, and a business plan of her company do not indicate that her proposed endeavor has national or global implications within a particular field or industry, has significant potential to employ U.S. workers, or has otherwise substantial positive economic effects for our nation. The Director further determined that the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. The Director added that the record did not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond the U.S. companies, learning institutions, and clientele to impact her industry more broadly at a level comparable with national importance. The record supports the Director's determination for the reasons we will discuss below.

The Petitioner stated that as a vocational training and career development specialist in the United States, she can consult companies on how to direct and implement vocational and professional development strategies among workers; she can provide personnel management training to help improve business leadership for any company, organization, or agency; and she can advise educational institutions by guiding students towards their optimal career path. She also stated that she can create strategies, projects, and products in the area of human logistics to enhance the competitive edge of companies, their operational capacities, and the effectiveness of their personnel.

On appeal, the Petitioner contends that her proposed endeavor is national in scope and will produce significant national benefits due to the ripple effects of her professional activities. The Petitioner further contends that her proposed endeavor will contribute to U.S. companies' increased productivity by improving their internal functions and allowing them to retain and hire the most qualified, valuable workforce. The Petitioner also contends that her work will provide her clients with the proper tools and resources to improve wages, working conditions, and workforce productivity and that this will translate to an increase in national business productivity, which will offer substantial benefits to the U.S. economy.

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. While we acknowledge the Petitioner's claims, she has not provided sufficient evidence to substantiate them. She has not provided documentary evidence that her proposed job duties as a vocational training and career development specialist would impact the employment services industry more broadly rather than benefiting her clients, i.e., the U.S. companies, learning institutions, organizations, or agencies that she would serve. *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." *See Dhanasar*, 26 I&N Dec. at 889-90. Here, the Petitioner's proposed endeavor would benefit her clients - companies and their employees and customers, learning institutions and their students, organizations and their members, or agencies and their employees. However, the record does not sufficiently indicate how the proposed endeavor has broader implications beyond her clients. Without sufficient documentary evidence of its broader impact, the Petitioner's proposed work does not meet the national importance element of the first prong of the *Dhanasar* framework.

On appeal, the Petitioner asserts that she has more than 18 years of progressive experience and acumen in the vocational training and career development industry. She also asserts that she has strong skills in business administration, business and executive coaching, project management, human resource management, recruitment, training and development, performance coach, and social responsibility, which she acquired during the roles she has served throughout her career. The Petitioner provides her work history. The Petitioner's academic and prior career accomplishments, lengthy work history, relevant skills, and practical insight and judgment may support that she is well positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. However, they do not address her future endeavor or how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance.

On appeal, to further explain the significance and scope of her proposed endeavor, the Petitioner refers to the previously submitted industry reports and articles. The Petitioner contends that human resources and operational management are the cornerstones of all successful businesses and that human resources strategies contribute to companies' financial success. At the time of filing her petition, the Petitioner submitted various articles, which discuss the importance of training and development in the workplace, employee learning, and the role of training and development in an organizational development. In response to the request for evidence (RFE), the Petitioner submitted various articles, which discuss the struggles of universities, the increased interest in U.S. education from international students, the role of human resources in successful organizations, corporate learning, employee engagement and development, operational innovations, the importance of human resources management in the workplace, and contributions of immigrant entrepreneurs to the U.S. economy.

First, the record is unclear whether the Petitioner's proposed endeavor is to work as a vocational training and career development specialist in the employment services industry or to work as a human resources manager or human resources specialist in the human resources industry because the Petitioner provided articles relating to two different professions in two different industries. Second, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The articles generally discuss the importance of training and development in the workplace and human resources management in organizations. But the articles do not directly provide the potential prospective impact of the Petitioner's proposed specific work.

On appeal, the Petitioner contends that her proposed endeavor will substantially benefit the United States by creating jobs, promoting effective business advisory within multinational environments, and providing unparalleled and full-service human resources and business consulting services to U.S.

companies. In response to the RFE, the Petitioner submitted a business plan of her company, [redacted] The business plan indicates that her company intends to provide vocational training, career development services, leadership development programs, and talent acquisition services for any company, organization, or agency in the United States. The business plan also indicates that the company plans to hire six employees (five part-time employees and a full-time employee) and a contractor during the implementation phases and that these six employees and a contractor consist of a social media customer care specialist, a media planner, a web maintenance specialist, an accountant, a legal professional, a marketing analyst, and an account manager. The business plan further indicates that the company projects a total revenue of $157,840 during the first year of operation and $583,760 during the fifth year of operation. However, the business plan does not adequately explain how these income projections and staffing targets will be realized. Moreover, the record does not establish the significance of employing five part-time employees, a full-time employee, and a contractor during the claimed implementation phases and how that may constitute a substantial positive economic effect. Therefore, the Petitioner has not demonstrated by a preponderance of the evidence that her business will have an impact on a particular industry or the U.S. economy at a level commensurate with national importance.

Additionally, the Petitioner contends that she will establish her company in an SBA HUBZone area that will help to fuel small business growth in historically underutilized business zones. The business plan of her company states that the principal office of the company is located at [redacted] The record does not contain sufficient evidence to demonstrate that this address is a historically underutilized business zone or a HUBZone area as claimed by the Petitioner. According to the SBA HUBZone Map, the location of the company is not qualified to be a HUBZone area.[3] As such, the Petitioner has not shown by a preponderance of the evidence that her company has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.

Although we have not addressed each piece of evidence individually, we have reviewed and considered each one. The record remains insufficient to demonstrate the national importance of the proposed endeavor for the reasons we have discussed above.

Because the documentation in the record does not sufficiently establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated by a preponderance of the evidence 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. Accordingly, we will reserve these issues for future consideration should the need arise.[4]

III. CONCLUSION

[3] *See* Small Business Administration, *HUBZone Qualification Report* (Apr. 8, 2023), https://maps.certify.sba.gov/hubzone/map#center=29.803119,-82.145085&zoom=8&q=10216%20Merry%20Meeting%20Bay%20Drive%2C%20Winter%20Garden%2C%20Florida.

[4] *See INS v. Bagamasbad,* 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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 alternate issues on appeal where an applicant is otherwise ineligible).

Although the Petitioner has shown that she is a member of the professions holding an advanced degree and that her proposed endeavor to work in the United States as a vocational training and career development specialist has substantial merit, she has not shown that her proposed endeavor has national importance. Therefore, the Petitioner has not established by a preponderance of the evidence that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.