U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23792341

Date: MAY 04, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification, 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 the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 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. Id.

[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.

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 proposes to work in the United States as a marketing manager having worked in the marketing and communications business for more than 15 years in Brazil. She holds a bachelor's degree in tourism from Universidade [redacted] in Brazil and a post-graduation certificate in business management from [redacted] in Brazil. The Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree.[3]

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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. Matter of Dhanasar, 26 I&N Dec. at 889. The Director determined that the Petitioner's proposed endeavor has substantial merit but does not have national importance.

The Petitioner initially submitted a professional plan with her Form I-140 indicating that she intended "to work as a [m]arketing [m]anager for U.S. organizations needing to restructure their marketing, communication, events and conferences, and branding initiatives." The Petitioner explained the U.S. has a need for marketing managers and submitted a list of companies she intended to pursue job opportunities within her field. She stated she had previously "applied to numerous jobs within the [U.S.]" but had not been hired due to her needing employment authorization to work in the U.S. The Petitioner included correspondence from businesses explaining her job applications were not being further considered, one of which pointed out it was not hiring applicants without a valid employment

[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).

[3] The record establishes that the Petitioner holds the foreign equivalent of a bachelor's degree from an institution of higher education in the United States, and that she has at least five years of progressive, post-baccalaureate experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

authorization. The Petitioner's initial description of the proposed endeavor does not provide details beyond her intention to continue working as a marketing manager for U.S. organizations and businesses. The Petitioner did not include any specific plans or evidence about starting a marketing consulting business with her initial submission of the Form I-140.

The Director issued a request for evidence seeking further information and evidence that the Petitioner meets each of the three prongs of the Dhanasar framework. In response, the Petitioner submitted a statement revising her proposed endeavor. She stated that she intended to utilize her marketing experience and knowledge to start her own marketing consulting firm in New York. The new business would "promote products and advertisement services of companies, and achieve significant cross-border sales for U.S. companies looking to grow abroad, as well as foreign companies looking to move and grow in the U.S."

The Director found that the Petitioner's proposed endeavor has substantial merit, but not national importance. On appeal, the Petitioner contends that the Director did not apply the proper standard of proof and erred by not giving "due regard" to the evidence submitted, specifically the Petitioner's professional plan and statement, business plan, letters of recommendation, industry reports, and news articles.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what she claims is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed her evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

As the Director already determined that the Petitioner's proposed endeavor has substantial merit, we will only analyze whether the Petitioner's endeavor is of national importance. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs. Upon de novo review, we find the Petitioner did not demonstrate that her endeavor satisfies the national importance element of Dhanasar 's first prong, as discussed below.

On appeal, the Petitioner claims that her proposed endeavor to work as a marketing manager for her proposed business is of national importance "based on the prospective social and economic impact of her proposed endeavor" evidenced in her professional plan and statement, the business plan, the letters of recommendation, the industry reports, and news articles. The Petitioner argues the evidence submitted establishes by a preponderance of the evidence that the Petitioner's proposed endeavor has the potential to realize significant beneficial economic effects in the U.S.

The Petitioner argues on appeal that she "does not have the burden of providing by a preponderance of the evidence that the endeavor must succeed; it is enough that the Petitioner proves by a preponderance of the evidence that the endeavor has the potential to do so." The Petitioner believes she "has fully described in her business plan how her company . . . intends to hire [U.S.] workers." The Petitioner argues her intended business will impact the marketing consulting industry with wages

of 1.84 million dollars in five years and with it opening three offices in New York, Illinois, and the District of Columbia. The Petitioner claims her new business would generate 30 direct jobs for U.S. workers, half of them with high technical qualification which would help U.S. small and medium business "improve its competitiveness and revitalize their post-pandemic operations."

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. Id. The Petitioner's business plan explains her intent to start a new marketing business in New York, expanding to Illinois in three years and to District of Columbia in five years. The business plan states that her new business will benefit the U.S. economy by offering a "very specific market niche" of "digital marketing, brand building, and customer engagement to . . . small and medium business" in underutilized business zones which are focused on "corporate, financial services, and luxury goods."

In her statement, the Petitioner claims her endeavor would benefit the U.S. economy "through the securement of foreign direct investment". She intends to work with companies looking to expand into Latin America and European markets; to identify business development opportunities through her research; and to utilize her marketing strategies to bring foreign direct investment into the U.S. The business plan explains the foreign direct investments will directly and indirectly benefit the U.S. economy with "new jobs, investments, and business opportunities". The Petitioner specifies generating business by participating in seminars and networking with Brazilian executives and entrepreneurs in the U.S. Her new business plan projects hiring 30 employees in five years and generating a total payment of wages of 1.84 million.

However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner also has not provided corroborating evidence, aside from claims in her business plan, that her business' future staffing levels and business activities stand to provide substantial economic benefits to underutilized areas of New York, Illinois, District of Columbia, and the United States. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creation of 30 jobs and paying wages of 1.84 million dollars rises to the level of national importance.

The Petitioner's claims that her marketing consulting business will obtain foreign investments that will directly and indirectly benefit the U.S. economy with "new jobs, investments, and business opportunities" has not been established through independent and objective evidence. Statements of her intent to obtain foreign investments by participating in seminars and networking with Brazilian executives and entrepreneurs in the U.S. is not sufficient to demonstrate her endeavor has the potential to provide economic benefits to the U.S. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as a marketing manager at the company would impact the marketing industry more broadly rather than benefiting her proposed clients and their customers, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The Petitioner further claims on appeal that she demonstrated national importance through previously submitted documentation of her expertise and experience in recommendation letters from colleagues and clients discussing her work experience and expertise as a marketing specialist. The Petitioner

argues that her extensive experience and expertise place her in a position "to more rapidly and efficiently provide any U.S. firm or company with a competitive advantage, regardless of sector or industry." However, these documents relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. 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. Id.

The Petitioner's resume and recommendation letters only address her past accomplishments as a marketing professional impacting her workplaces and do not address national importance of her endeavor's "potential prospective impact." For instance, a letter from the Petitioner's client indicates that the Petitioner "has great people skills and she always finds a way to come up with a creative solution to execute an idea, all while managing to meet the established budget"; "[s]he developed [her company's] internal marketing initiatives"; she "coordinates all holiday and seasonal events for the company"; and "[the Petitioner] has increased the support and credibility of the company's internship program". Another letter from a coworker states that the Petitioner "has structured the [m]arketing and [c]ommunications department [sic] by designing and implementing processes, bringing in new suppliers and renegotiating contracts and fees"; "she enhanced [the company's] profile by effectively organizing and coordinating events, marketing materials, media relations, social media, and advertising"; "[s]he set up and implemented an annual communications strategy"; and "[s]he is efficient in planning and coordinating high profile corporate events for local and offshore investors".

We acknowledge that the Petitioner provided valuable marketing services for her employers and clients in the past, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of her proposed endeavor rising 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.

In addition, these letters do not show that the Petitioner's proposed endeavor will substantially benefit the U.S. business industries and the field of marketing, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that the Petitioner's marketing skills differ from or improve upon those already available and in use in the United States.

We further note the Petitioner submitted an expert opinion from [redacted] associate professor of marketing at [redacted] University in [redacted] Oklahoma, which includes an analysis of the national importance of the Petitioner's proposed endeavor. The opinion states, "As explained, [sic] the growing trade industry in the Latin American region would affect the U.S. economy, it is most advantagous [sic] for our country to use [the Petitioner's] in-depth knowledge to the advantage of the United States and expand our strong economy outside our shores." However, the record does not demonstrate that her proposed endeavor includes collaborative works between U.S. companies and Latin America companies, or that she is actively targeting U.S. companies that do business, or plan to do business in Latin America or Brazil. Where an opinion is not in accord with other information or is in any way

questionable, USCIS is not required to accept it or may give it less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm'r 1988).

The Petitioner further claims national importance of her proposed endeavor based on industry reports and articles describing the valuable role that marketing and advertising managers plays in success and viability of businesses. The record also includes reports on the marketing and advertising industry in the U.S. and hiring trends for marketing talent, which comprehensively cover the industry's overview, outlook, life cycle, market demands, success factors, key players, and relevant statistics. Additional articles relate to immigrants' positive effects on U.S. businesses and entrepreneurship, as well as the importance of foreign direct investment on U.S. businesses.

We recognize the importance of the marketing industry and related careers; the significant contributions from immigrants who have become successful entrepreneurs; and the positive effects foreign investment can have in U.S. businesses; however, merely working in the marketing field or starting a marketing consulting business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. We also stated that "[a]n 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." Id. at 890. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

Subsequently, the Petitioner does not demonstrate that her proposed endeavor extends beyond her future clients or employers, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. The economic benefits that the Petitioner claimed depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between her marketing consulting work and the claimed economic results.

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 eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs. 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 find that the Petitioner has not established eligibility for 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.