U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28153009

Date: SEP. 05, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a medical products sales and distribution specialist, 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 it would be in the national interest to grant the Petitioner a discretionary waiver of the job offer requirement. 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 a member of the professions holding an advanced degree 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).

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

II. ANALYSIS

The Director concluded, and the record demonstrates, that the Petitioner established her eligibility for EB-2 classification as a member of the professions possessing an advanced degree.[2] Therefore, the sole issue to be addressed is whether the Petitioner established that she qualifies for a discretionary waiver of the job offer requirement under the *Dhanasar* framework.

The Petitioner initially submitted a professional plan and statement indicating her intent to continue working in her profession as a medical products and sales distribution specialist for a company in the medical products or pharmaceutical sector. In response to the Director's request for evidence (RFE), the Petitioner submitted a more detailed statement accompanied by a five-year business plan, in which she described her plans to co-found and serve as operations manager for a Florida company providing outsourced marketing consulting services and pharmaceutical sales team training workshops to clients in the pharmaceutical and medical products industry. The record reflects that the Petitioner gained approximately 10 years of experience as a pharmaceutical sales representative for Brazilian and multinational companies prior to relocating to the United States in 2019.

The Director concluded the Petitioner did not demonstrate that she satisfies any of the prongs under the *Dhanasar* analytical framework, and therefore did not establish that she should be granted a national interest waiver as a matter of discretion. On appeal, the Petitioner asserts that the Director ignored or mischaracterized credible and probative evidence, misapplied established legal standards for adjudicating national interest waiver petitions, and inflated the standard of review above the preponderance of the evidence standard.

For the reasons provided below, we agree with the Director's determination that the Petitioner did not establish the national importance of her proposed endeavor. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

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, health, or education.

---

[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).

[2] The Petitioner provided evidence that she completed four years of undergraduate study at a Brazilian university and graduated with the foreign equivalent of a U.S. bachelor's degree in business administration. She also completed a post-graduate MBA course in marketing and possesses more than five years of progressive post-graduate experience in the marketing specialty. *See* 8 C.F.R. § 204.5(k)(2).

The record includes occupational data for medical sales representatives as well as industry reports on the medical and pharmaceutical sales sector, its impact on the healthcare industry, and the role of this profession in ensuring physicians and their patients have awareness of and access to the latest medical advancements. In addition, the Petitioner provided articles and reports discussing the role of entrepreneurship in job creation and economic development in the domestic and global economy and the value of immigrants and immigrant entrepreneurs as drivers of U.S. new business growth. Based on this evidence, the Petitioner sufficiently demonstrated that her proposed endeavor to establish a marketing consulting and training services company in the medical and pharmaceutical sales sector has substantial merit.

However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. In *Dhanasar*, we emphasized that "we look for broader implications" of the specific 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." 26 I&N Dec. at 889. 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.

On appeal, the Petitioner maintains that her proposed endeavor will contribute to the economy as it will require U.S. workers and attract foreign direct investment that will be transformed into "new jobs, investments, and business opportunities" and "will contribute to . . . the national interest."

We have reviewed the staffing and revenue projections in the submitted business plan. The Petitioner projects that her company will directly employ 19 fulltime and parttime employes in three states within five years and during that period, cumulatively pay wages of over $1.5 million, generate gross revenues of over $4.1 million, and contribute over $256,000 in tax revenue to the economy.

However, these employment and revenue projections are not supported by details showing their basis or an explanation of how they will be realized, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the direct creation of 19 additional full- and parttime jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. While the Petitioner submitted industry data showing that marketing consulting is a high growth sector and a significant contributor to the U.S. economy, she has not demonstrated how a business that expects to generate $4 million over five years will have substantial positive economic effects on this sector, which generates billions of dollars in revenue and employs over 500,000 workers.

The Petitioner states she intends to "help fuel small business growth in historically underutilized business zones" in the cities of [redacted] The accompanying business plan indicates her company will open branches in "selected HUBZones" in these cities but does not further elaborate on these plans.[3] The Petitioner has not offered sufficient evidence that her business, which

[3] Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized business zones, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies annually. *See* "HUBZone Program," https://www.sba.gov/federal-contracting/contracting-assistanceprograms/hubzone-program.

had not yet been incorporated or secured physical premises, will have offices in one or more HUBZones. Further, she explicitly states that her proposed endeavor would not participate in the HUBZone program and would not be eligible to do so. While it appears the Petitioner may have intended to equate a designated HUBZone with an "economically depressed area," the record does not support a conclusion that this is an equitable comparison. Finally, she has not otherwise claimed or provided evidence that the areas where her company intends to operate are economically depressed, that it would employ a significant population of workers in those areas, or that her endeavor would offer a region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue.

We recognize that the Petitioner's consulting activities in the medical and pharmaceutical field are intended to lead to improvements in sales and marketing strategies and employee training which may indirectly result in increased revenues for her business clients. However, the record lacks sufficient evidence that these gains would be significant enough to establish her proposed endeavor's national importance. The Petitioner's appellate brief also places particular emphasis on the potential for foreign direct investment. Although the Petitioner submitted articles about the importance of foreign direct investment to the U.S. economy, neither the Petitioner's statements nor the submitted five-year business plan address the proposed endeavor's potential for attracting such investments. Therefore, the record does not support a determination that any direct or indirect benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See id.* at 890.

We have also considered whether the Petitioner's proposed endeavor will have broader implications in her field or industry. We determined in *Dhanasar* 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. 26 I&N Dec. at 893. Here, the Petitioner, through her company, intends to deliver both consulting services and employee training workshops to companies engaged in pharmaceutical sales.

Like the petitioner in *Dhanasar*, the Petitioner has not established how her teaching or training activities would have broader implications in her field that reach beyond the participants in her company's workshops. The record does not establish, for example, that she plans to disseminate her training methods or course materials such that her specific endeavor would provide a platform for the introduction of new training processes or methodologies or that she would otherwise be positioned to meaningfully influence how pharmaceutical sales representatives are trained in the United States.

To further illustrate the potential impact of her proposed endeavor, the Petitioner points to her past employment in medical and pharmaceutical products sales and her academic qualifications in marketing and business administration. We reviewed her statements and several reference letters from her employers and peers. The authors of the letters praise the Petitioner's abilities as a pharmaceutical and medical product sales specialist, her professionalism and commitment, her personal attributes, her subject area expertise, and her past contributions to her employers' organizations. However, they do not discuss her specific proposed endeavor or explain why it has national importance nor do they speak to the potential broader implications of her intended work. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*. Furthermore, we note that the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec at

890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a university professor in the marketing field. In addressing the first prong of the *Dhanasar* framework, the author emphasizes that the Petitioner will contribute to the medical product industry on a national level "by participating as a speaker in important sales and distribution events in the United States, such as congresses, seminars, fairs, workshops, lectures in universities and colleges and many others," and by having a positive impact on the revenues of companies that employ her services to increase their sales in this sector. However, the expert opinion letter is very general, significantly focuses on the importance of the overall healthcare industry, and does not address the Petitioner's five-year business plan, the specific proposed endeavor described therein, its prospective substantial economic impact, or any broader implications of the Petitioner's intended consulting business in the field.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

While the Petitioner's evidence shows how her proposed endeavor stands to positively impact her business clients and their employees, it does not demonstrate how the endeavor will have a broader impact consistent with national importance. Accordingly, the Petitioner has not established that her proposed endeavor meets the first prong of the *Dhanasar* framework.

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning her eligibility under the remaining prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.