U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28087618

Date: SEP. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an attorney, 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, 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[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 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 that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined 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 prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a letter of support, counsel for the Petitioner stated that the Petitioner intends to work in the United States as an international arbitration legal advisor, and noted that she had received offers of employment from several companies including [redacted] one of the world's largest international law firms. Counsel indicated that the Petitioner intended to work for [redacted] stating that she would perform arbitrations and therefore help U.S.-based companies reach amicable settlement agreements and evade obstacles associated with traditional litigation.

The initial filing also included copies of the Petitioner's academic credentials, a job offer letter, letters of recommendation, and industry articles and reports in support of her eligibility.

The Director issued a request for evidence (RFE), noting that the record as initially constituted was insufficient to demonstrate that the proposed endeavor had substantial merit or national importance. The Director observed that the Petitioner did not provide a statement of her own in support of her proposed endeavor, and requested a detailed description of the proposed endeavor so that the Director could evaluate her request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted a personal statement, claiming that she was the owner of [redacted] She further stated:

> I am working as the company's CEO and Lead International Arbitration Legal Advisor. Through my company, I offer legal consulting services on alternative dispute resolution and arbitration. My company specializes in multiple alternative procedures, including conciliation and/or representation in international arbitral proceedings. We focus on infrastructure, construction, and transportation contracts that require a neutral territory and set of laws to resolve controversies between parties.

She further stated that her company will offer employment opportunities for the U.S. public, as well as "alleviate the U.S. court congestion and reduce trial costs." In this new statement, she omitted

mention of seeking direct employment with U.S. companies such as [redacted] as an international arbitration legal advisor.

The Petitioner also submitted her company's business plan, opinion letters, and additional recommendation letters, articles, and reports in support of her eligibility for a waiver of the job offer.

In denying the petition, the Director determined that the Petitioner provided two different descriptions for her proposed endeavor. The Director noted that she initially stated her intent to work as an international arbitration legal advisor for [redacted] or another U.S. company, but later indicated in the RFE reply that she had opened her own consulting company that will provide alternative dispute resolution (ADR) and arbitration services. The Director determined that in addition to materially changing the original proposed endeavor, the Petitioner had not shown that her endeavor had significant potential to employ U.S. workers, offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that the Director's decision was erroneous. Specifically, she asserts that contrary to the Director's determination, the record demonstrates the substantial merit and national importance of her proposed endeavor. She further asserts that the Director arbitrarily and capriciously ignored evidence, including her business plan, testimonials letters and letters from industry experts.

Preliminarily, we note the Petitioner's initial description of her proposed endeavor did not include plans to form her own consulting company and serve as its CEO. 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); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Here, the Petitioner has made significant changes to her initial proposed endeavor of working as an international arbitration legal advisor for a U.S. employer. As the *Dhanasar* framework requires an analysis of the substantial merit and national importance of the specific endeavor proposed by an individual, such a change is material to their eligibility for a national interest waiver.[2] Also, a petitioner must meet eligibility requirements for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's plans to direct a newly established company, submitted for the first time in response to the RFE, cannot retroactively establish eligibility. We will therefore not consider this new evidence in our analysis under the *Dhanasar* framework.

As stated above, the Petitioner intends to work as an international arbitration legal advisor for a company in the United States. In denying the petition, the Director concluded that the Petitioner failed to provide sufficient detail regarding her proposed endeavor to show that it was of substantial merit. We agree that the record includes generic descriptions of an international arbitration legal advisor's duties, and specifically note that the Petitioner did not submit a supporting statement describing her initial endeavor, but rather relied on the statements of her counsel. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of*

[2] Counsel for the Petitioner argues on appeal that the changes made to the proposed endeavor in response to the RFE did not constitute a material change because pursuant to INA § 204(j),"a Petitioner is able to change employment so long as it is within the same or similar occupation classification." Counsel's argument is misplaced, however, because this employment-based immigrant visa category is not tied to a specific job offer and individuals seeking a national interest waiver of the job offer requirement do not have to request job portability under section 204(j) of the INA.

Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980)). Per our decision in *Dhanasar*, it is the substantial merit of the specific endeavor that must be established, not the merits of an entire field or industry. *Id.* On appeal, the Petitioner does not challenge the Director's conclusions, but instead focuses on the merits of her newly formed company and its business plan. She has thus not shown that her original proposed endeavor is of substantial merit in the field of law.

Similarly, the Petitioner does not address the Director's conclusion that her proposed endeavor would not have broader implications for the field of law, or have significant potential to employ U.S. workers or have other substantial positive economic effects. We note her submission of articles and industry reports regarding the backlogs in courts due to litigation and the manner in which ADR can help mitigate such backlogs. However, this evidence concerns the overall impact of ADR in the field of law in general, and does not show that the Petitioner's work for a single company in the United States would have broader implications for those fields or would otherwise be of national importance.

Throughout the record, the Petitioner points to her background, education, and experience in her field, noting that she has extensive professional experience in the area of ADR. The Petitioner's knowledge, skills, and experience in her field, however, 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 she proposes to undertake has national importance under the second consideration of *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.

To the extent that the Petitioner's proposed endeavor can be understood, we conclude that she has not substantiated how her specific work as an international arbitration legal advisor will positively impact the economy. Specifically, how one lawyer working in the field of ADR will trigger substantial positive economic impacts has not been explained. The Petitioner has not provided sufficient information of how her work performing ADR services in the legal field would rise to the level of national importance. While such an endeavor may impact her employers or the individual clients she assists, the national importance of this work has not been adequately explained or substantiated. Similarly, 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 her field more broadly. *Id.* at 893.

The Petitioner further contends that the Director did not duly consider certain pieces of evidence, such as her company's business plan, letters of recommendation, and opinion letters. In support, she relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.[3]

For example, while the Petitioner submitted letters of recommendation from others in the legal field, none of the authors discussed the Petitioner's proposed endeavor as initially stated. Instead, the authors primarily focused on the Petitioner's past work experience and accomplishments. Although the record contains statements regarding the Petitioner's career in the legal field and her achievements

[3] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

in the field of ADR, and although the letter writers praise the Petitioner's qualifications and commend her work, we have insufficient information concerning the Petitioner's proposed endeavor with which to make a determination concerning its substantial merit and national importance. Again, 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." *Id.*

The Petitioner also submitted advisory opinions from a professor of law at [redacted] University and an adjunct professor at the University [redacted] School of Law. Both writers focus primarily on the Petitioner's role as CEO of her newly established company, where she proposes to provide ADR and arbitration services. As discussed above, this proposed endeavor, introduced for the first time in response to the RFE, constitutes a material change to the Petitioner's initial proposed endeavor and we will not consider it in our appellate review, as a Petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175; *see also Matter of Katigbak*, 14 I&N Dec. at 49. Therefore, the writers' comments regarding the Petitioner's role as CEO of her own company, which was established after the filing of the petition, bear little evidentiary weight.[4]

The writers also discuss the Petitioner's qualifications, the importance of arbitration as a means of resolving international commercial disputes, and the field of ADR in general. The advisory opinions do not contain a discussion of the initial proposed endeavor or its national importance but rather focus on the Petitioner's new endeavor and the importance of the ADR field. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinions are of little probative value as they do not meaningfully address the details of the proposed endeavor as initially described and why it would have national importance.

On appeal, the Petitioner states that her newly established business will create jobs and benefit the wider U.S. economy, and asserts that the Director erred in not sufficiently reviewing her business plan when determining substantial merit and national importance. As previously noted, however, the Petitioner's plans to direct a newly established company, submitted for the first time in response to the RFE, constitute a material change to the proposed endeavor as initially stated, and therefore will not be considered. Even if we were to consider this new proposed endeavor, the evidence is insufficient to show that the potential prospective impact of this endeavor would have the sort of potential to employ U.S. workers or other positive economic effects that would rise to the level of national importance.

Because the Petitioner has not shown that she intends to pursue her initial endeavor and because she has not provided sufficient information and documentation regarding her proposed endeavor, she did not demonstrate that the endeavor has substantial merit and national importance. Therefore, we cannot conclude that she meets the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's

[4] The record shows that the Petitioner did not incorporate her company until [redacted] 2022, approximately seven months after she filed the petition.

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 conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.