U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31160648

Date: JUN. 11, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an international commercial manager, 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 Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested 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 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 a 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 determined that the Petitioner qualified for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner established eligibility for a national interest waiver under the *Dhanasar* framework.

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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the proposed endeavor has substantial merit as it falls within the range of areas of substantial merit, namely business. *Id.* However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not establish its national importance.

The record reflects that the Petitioner intended to work in the United States as an international commercial manager. In her initial professional plan, the Petitioner asserted that she would "provide highly skilled services to esteemed trading practices, provide educational lectures to empower other professionals in the field, participate and lead innovative projects, and improve the operation of U.S. companies." In doing so, the Petitioner intended to participate in "the implementation of complex projects related to international trade . . . expand communication channels in national and international markets, multiply sales as well as customer/fleet/brand/region distribution . . . [and] play a critical role in the development of business strategies [involving] sales and trade." According to the Petitioner this would "not only serve to improve the country's supply of skilled professionals in the field, but also boost the U.S. economy and generate American jobs." Relying on her experience abroad, she asserted that she would be able to utilize "expertise to guide American companies' negotiations with the Latin America market."

In addition to the professional plan, the Petitioner also provided an expert opinion letter, multiple letters of recommendation, and various industry articles discussing sales manager and logistics occupations, various sales and marketing concepts, and the benefits of increased trade between the United States and Brazil.[2]

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

In response to the Director's request for evidence (RFE) requesting clarification on the substantive nature of the Petitioner's proposed endeavor, the Petitioner submitted a new professional plan explaining that, as an international commercial manager, she intended to specialize "in developing and managing large accounts, sales strategies, customer retention, and profit optimization." She asserted her work would go "beyond the work of ordinary [i]nternational [c]ommercial [m]anagers, as [her] endeavor will innovate in the field of international commerce by implementing technical knowledge of products, SWOT [strength, weaknesses, opportunities, and threats] analysis, and [p]rice and [m]argin [r]ealization methodologies." According to the Petitioner's new professional plan, her expertise would "not only enable the effective implementation of these methodologies but also lead to the creation and development of new techniques that will result in immeasurable contributions and impact to the U.S. international commerce sector, including cost reduction, increased production, quality assurance, enhancement of the workforce, [and] job creation." Ultimately, she asserted that her work would broadly impact the industry and U.S. economy by enhancing profitability and increasing customer portfolios for U.S. companies, enabling business growth, and improving the qualifications of America's key account managers. The Petitioner also supplemented the record with an updated resume, a new employment verification letter, and what she claimed were numerous job offers.

The Director concluded that the record did not demonstrate the national importance of the Petitioner's proposed endeavor because the prospective impact of her endeavor would be limited to her prospective employers and their customers. Moreover, the Director concluded that the proposed endeavor was insufficiently defined, noting that a national interest waiver is not intended to facilitate a petitioner's job search in the United States. The Director also concluded that the Petitioner did not establish that her endeavor would have significant potential to employ U.S. workers or otherwise result in substantial positive economic effects as contemplated in *Dhanasar*.

Upon de novo review, we agree the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance. In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

On appeal, the Petitioner generally asserts that the Director erred in their conclusions regarding the limited impact of her endeavor, and that the decision "contains numerous erroneous conclusions of both law and fact." Importantly, however, other than expressing general disagreement with the Director's conclusions, the Petitioner does not elaborate with specificity how the Director erred and relies on the same arguments previously put forth, for instance, asserting that the evidence on record "unmistakably establishes the significant and broad-reaching implications of [her] proposed endeavor within the field of international sales." Yet, in making this assertion the Petitioner primarily relies on general industry reports, rather than the prospective impact attributable to her specific endeavor. When considering the national importance of a proposed endeavor, the industry or customer base a petitioner

will serve alone is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

Likewise, the Petitioner asserts that the Director's conclusions regarding the limited impact of her endeavor "is rebutted by the meticulous documentation of [her] qualifications and achievements . . . [which] positions her as a professional whose impact extends far beyond the immediate scope of individuals companies or clients." But this misapplies the *Dhanasar* framework. A petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor. Moreover, the Petitioner does not substantiate her assertions with relevant and probative evidence of prior achievements showing a broader impact to the field beyond her prior employers. While we have reviewed the multiple recommendation letters on record, which assert the Petitioner's "expertise in logistics, exports, [and] international markets," as well as her "ability to manage several accounts of large companies," the letters do not establish her prior impact to the industry or the prospective impact of her proposed endeavor. Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).

Likewise, while the Petitioner submitted a new employment verification letter, and what she claimed were numerous job offers in response to the Director's RFE, this evidence is not probative in demonstrating the Petitioner's eligibility. First, while the Petitioner stated that she submitted multiple "job offers" to establish the importance of her endeavor, the emails submitted were not job offers, but rather messages from recruiters notifying her of job openings and inviting her to apply. And these emails were sent after the filing of this petition. Moreover, the Petitioner began the employment discussed in the employment verification letter and her updated resume after she filed this petition. As such, neither can be considered when evaluating the Petitioner's eligibility as a petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak* 14 I&N Dec. 45, 49 (Comm'r 1971)

The Petitioner also emphasizes her intention to provide valuable services to her future employer(s) and their clients, including "identifying client needs through technical visits to production plants, collaborating with engineering departments to develop tailor-made products, establishing competitive pricing based on volume and product features, and ensuring seamless product implementation from start to finish" However, she has not shown that these services (or, rather, job duties), which may increase the business revenue for her employer(s) or customers, rise to the level of national importance. For example, while the Petitioner asserts her intention to "revolutionize the field of international commerce by implementing innovative sales strategies rooted in product technical knowledge," she has not provided an explanation as to *how* she intends to do this, and clearly explained *what* impact this would have on the broader industry. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). 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. *Dhanasar* at 893. Here too, we agree with the Director that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her potential

employer(s) and their clients to impact the international business field more broadly at a level commensurate with national importance.

In addition, while the Petitioner insists on appeal she submitted evidence that "explicitly outlines the expected positive economic impact and job creation resulting from [her] proposed endeavor," she refers only to general industry articles and research discussing the importance of international sales and business operations to the U.S. economy and the country's gross domestic product (GDP). And she contends that by successfully helping her employers' business growth, she will "contribute to the U.S. economy, stimulate economic growth, and generate employment opportunities." Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not provided a sufficient explanation of the prospective impact directly attributable to her proposed work, including projected employment numbers or projected revenue growth, or an impact an economically depressed area. The Petitioner's statements could reasonably apply to any business professional in the field who has a positive impact on their employer's operations, but Congress did not provide a blanket exemption for business professionals with respect to the job offer and labor certification requirements.

We also reviewed the expert opinion letter from from Dr. V-L- and conclude that it provides little probative value in establishing the national importance of the Petitioner's endeavor. Notably, while Dr. V-L- asserts that the Petitioner's services "could benefit large-scale companies as well as medium-sized companies," they do not explain how the benefits the Petitioner will provide to her employers will rise to the level of national importance. For example, Dr. V-L- opines that the Petitioner's endeavor will broadly enhance societal welfare because her work will "increas[e] sales opportunities for U.S. companies," but does not elaborate on how generating business for her direct employers would impact society rather than just her immediate employer. Similarly, while discussing the potential for her endeavor to result in significant potential to employ U.S. workers, Dr. V-L- states that the Petitioner "has the potential to pursue the spread of her knowledge . . .by promoting personnel training and participating in events as a speaker [and] she will disseminate her knowledge to teach other professionals." However, Dr. V-L- does not elaborate on what knowledge or "strategic methodologies and plans" the Petitioner would disseminate, or to whom this training would be provided so that we can evaluate the prospective impact.

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 noncitizen'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 letters lacks relevance with respect to the national importance of the Petitioner's proposed endeavor.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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.