U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8887828

Date: AUG. 27, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a legal consultant, seeks second preference 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is

[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

[2] See also Poursina v. USCIS, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.

Regarding her claim of eligibility under Dhanasar's first prong, the Petitioner indicated that she intends to continue her "career in the United States as a legal consultant."[4] She asserted that her proposed endeavor is aimed at "promoting major cross-border, commercial activities. For instance, I will advise foreign companies, as well as foreign individual investors, on how to efficiently conduct business in the U.S. market." In addition, the Petitioner noted that her proposed work includes advising "U.S. companies looking to commence cross border transactions with Brazil and other Latin American countries." She explained that she plans to "consult U.S. and foreign companies on important issues relating to cross-border activities, such as 1) tax implications and tax treaties, 2) differing legal systems, 3) dispute resolution, 4) diplomacy, and 5) culture awareness." The Petitioner further stated that her undertaking involves:

- U.S. job creation through the export and import of U.S. goods and services
- Reduction of risk exposure related to cross-border activities involving Brazil and Latin America
- Facilitat[ing] the execution of projects by helping navigate Brazilian and Latin American bureaucracy, including complex regulations pertaining to the legal, business, taxation, and commercial systems
- Facilitat[ing] the acquisition of appropriate licenses and permits, as related to national, local, and regional procedures across the United States, Brazil, and Latin America at large
- Simplify[ing] and improv[ing] access to an extensive collection of key contacts within public office, enabling fluidity of procedures and minimizing unwarranted obstructions across multiple foreign markets, including Brazil and Latin America
- Help[ing] . . . government institutions, entities, and authorities to identify opportunities for U.S. corporate investment
- Contribut[ing] to market research for major U.S. investments involving public regulations and government entities in Brazil and Latin America

Additionally, the Petitioner asserted that she owns and manages "an e-commerce company [redacted] which focuses on contemporary furniture. . . . The company mostly exports U.S.-manufactured goods and furniture . . . . I evaluate all tax law procedures and supervise . . . all import, export, and trade capacities

[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The Petitioner stated that she plans to "pursue a LLM (Master of Laws) in International Tax Law in the United States, which will allow me to verify and certify my attorney title and duties in the nation."

in order to ensure all company operations comply with the respective legal and business regulations." She also noted that she is "working with American companies – [redacted] and [redacted] – on important construction projects." The Petitioner further indicated that she assists these "corporations in acquiring legal permits to conduct their respective construction activities" and in drafting contracts "related to their intended commercial projects."

The Petitioner presented the March 2019 "Articles of Organization" for [redacted] identifying her as one of its three managers and a March 2019 letter from the Internal Revenue service assigning the company an Employer Identification Number. In addition, she submitted information about [redacted] and an email confirming her registration to attend the International Contemporary Furniture Fair in [redacted] 2019.

The record includes information about "Law Firms in the U.S," the legal services industry, the size of the U.S. legal market, the business environment in Brazil, factors influencing foreign direct investment in the United States, the complexity of Brazil's tax legislation, the risks of doing business in Latin America, the trade relationship between the United States and Brazil, the occupational outlook for lawyers, and recruitment challenges facing law firms. In addition, the Petitioner provided articles discussing legal consultant responsibilities, the role of lawyers in stimulating the economy, the positive effect of rule of law on business, the growth of the Brazilian economy, foreign investors' attraction to the U.S. commercial real estate market, the business environment in Latin America, market entry recommendations for Latin America, the declining role of the United States in the global economy, the impact of Brazilian residents and tourism on Florida's economy, and the challenges of tax compliance in Brazil. She also offered information about the expansion of cross-border real estate investment, the benefits of owning international real estate, overseas real estate investment opportunities, the Brazilian real estate market, international trade regulatory considerations in legal auditing and due diligence, integrating compliance into business strategy, the responsibilities of a law firm consultant, United States and Brazil's political and economic relations, Brazilian immigration to the United States, and forecasted lawyer job growth. The record therefore supports the Director's determination that the Petitioner's proposed work as a legal consultant has substantial merit.

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. In Dhanasar, we further 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.

In her appeal brief, the Petitioner maintains that as owner and manager of [redacted] she is advancing "cross-border initiatives involving the U.S. market" and that as an adviser to [redacted] and [redacted] she is "serving the United States' real estate construction market." She asserts that in addition to "enhancing the U.S. business industry" and "helping to improve cross-border business transactions," her proposed endeavor offers "substantial foreign investment activities to the nation, as Brazil and Latin America are key investors within the nation's real estate sector." The Petitioner also contends that her undertaking involves advising

"foreign entities and investors on how to invest within the U.S. market, while also helping U.S. companies find and attract clients, thus revitalizing both the nation's real estate sector and foreign investment activities, and, on a bigger spectrum, the national economy."

The Petitioner further argues that her proposed work "will produce significant national benefits, due to the ripple effects of her professional activities." Additionally, she states her undertaking "will contribute to tax revenue, prioritize the domestic job market, and ultimately help increase the flow of money in the U.S. on the national level, which will contribute to U.S. gross domestic product (GDP)." Finally, the Petitioner asserts that her proposed endeavor stands to affect the national economy by "driving financial productivity for U.S. companies that wish to expand their offerings of American-made furniture to markets abroad and increase their sales revenue," "offering economic convenience and agility . . . within the United States' construction sector," and "prioritizing the domestic job market – as she will employ U.S. workers within her U.S. company."

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. Although the Petitioner's statements reflect her intention to provide valuable legal consulting services for her U.S. company and future clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises 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. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her company and clientele to impact the furniture industry, construction sector, real estate market, or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not 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. Further analysis of her eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

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 reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.