U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 33246891

Date: SEP. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a finance 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 Texas Service Center denied the petition on August 25, 2021, concluding that the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner subsequently filed an appeal, which we remanded for further review of the submitted evidence and entry of a new decision. The Director issued a second denial, stating that although the Petitioner qualified for the classification as a member of the professions holding an advanced degree, she had not established the proposed endeavor's national importance and that it would be beneficial to the United States to waive the requirements of a job offer. The matter is now before us on appeal pursuant to 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. 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.

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). *Dhanasar* states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen 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 noncitizen 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 noncitizen. To determine whether the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors 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.

## II. ANALYSIS

The Petitioner proposes to work in the United States as a finance technologist at [redacted] The Director concluded that the Petitioner qualified 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 of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Director concluded that the Petitioner's proposed endeavor has substantial merit. The Director determined, however, that the Petitioner did not establish the proposed endeavor's national importance, whether she is well positioned to advance the proposed endeavor, and that, on balance, it

[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).

would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director erroneously denied the petition. The Petitioner further contends that the Director failed to apply the proper standard of proof and imposed a stricter standard. The Petitioner also claims the Director overlooked important details and affirms that she has presented sufficient evidence to demonstrate the proposed endeavor's national importance.

As a preliminary matter, the Petitioner initially indicated on the Form I-140 that she intended to work as a financial manager for [redacted] In May 2021, in response to the Director's request for evidence (RFE), the Petitioner submitted a professional declaration stating that she was hired as a financial planning and analysis manager for [redacted] Later, in response to the Director's second RFE, the Petitioner asserted that she joined [redacted] as a finance technologist in March 2023. The Petitioner explains that her proposed endeavor in financial management will enhance her employer's financial landscape and contribute to national initiatives by helping U.S. companies adopt strategies to expand operations, reduce costs, and create more jobs, thereby benefiting the overall U.S. economy.

On appeal, the Petitioner maintains that her proposed endeavor is of national importance. She contends that the evidence she has provided, including expert opinion letters and probative research documents, supports her claim that her proposed endeavor is of national importance. The expert opinion letters emphasize the Petitioner's financial managerial and financial planning and analysis experience as well as the importance of the financial manager industry. Although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's claimed extensive experiences are material to *Dhanasar's* second prong—whether an individual is well positioned to advance a proposed endeavor—but they are generally immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91. Moreover, the Petitioner must demonstrate the national importance of her specific proposed endeavor rather than the importance of the industry or profession in which the individual will work. *Id.* at 889. Here, the Petitioner has not done so.

In denying the petition, the Director concluded that the Petitioner did not demonstrate that her proposed endeavor has broader implications, has significant potential to employ U.S. workers, or that it would broadly enhance societal welfare or cultural or artistic enrichment. The Director also determined that the Petitioner provided insufficient evidence to confirm whether she intends to pursue her proposed endeavor in an economically depressed area, whether her endeavor would result in employing a significant population of workers in the area, or whether her endeavor would bring substantial positive economic benefits to a region, or its population as contemplated by *Dhanasar*. *Id.* at 890.

Furthermore, the Director's recent decision adequately addressed the evidence previously submitted and determined that the Petitioner did not demonstrate that she merited a national interest waiver. The Petitioner was therefore given a sufficient explanation of the grounds for denial as required by 8 C.F.R. § 103.3(a)(1)(i). Accordingly, we adopt and affirm the Director's decision regarding the discussion of the national interest waiver. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that

appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As the Petitioner has not established that her specific proposed endeavor has national importance and thus, did not meet the national importance requirement of the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and also hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *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 *Dhanasar* analytical framework's requisite first prong, we conclude that she has not established that 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.

**ORDER:** The appeal is dismissed.