U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26380748

Date: APR. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the wellness industry, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or as an individual of exceptional ability, 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, concluding that although the Petitioner established her eligibility for EB-2 classification as a member of the professions holding an advanced degree, she did not demonstrate 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, under section 203(b)(2) of the Act. An "advanced degree" is defined, in part, as any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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 determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.[2] Therefore, the primary issue before us 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.

A. The Proposed Endeavor

The Petitioner indicated on the Form I-140, Immigrant Petition for Alien Worker, that she intends to work as a "wellness entrepreneur" in the United States but she did not submit a personal statement or other evidence describing the specific proposed endeavor she intends to undertake. In a cover letter, counsel referred to the Petitioner's "[redacted] sports nutrition endeavor" and the initial submission included evidence that the Petitioner had registered the [redacted] brand name in both the United States and Ecuador.[3] The Petitioner also submitted screenshots from the company website indicating its marketing and sale of three products under this brand name: a whey protein powder that supports muscle growth and recovery, a "fat burner" dietary supplement that is described as being "unlike any Diet Pill before," and a waist shaping belt.

In a notice of intent to deny (NOID), the Director acknowledged the initial evidence related to [redacted] but emphasized that the record did not include an explanation of the Petitioner's plans for the proposed endeavor. In response to the NOID, the Petitioner stated that she is "the president and CEO of [redacted] a "sports nutrition company" and that she intends to continue working "at an exceptional/advanced level in furtherance of this field." The Petitioner provided a business plan that provides a broad overview of the company's vision, mission, and objectives. It expresses the company's dedication to "personal, physical and mental fitness" and its goal to be "the World's preferred and favorite nutrition and sports . . . brand." The NOID response also included an updated product listing that included a body cream for "tightening and slimming," a "slimming stick" workout enhancer, a collagen peptides powder, a "Night Time Burn" supplement, and gym accessories.

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[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 an official academic record showing that she has master's degree completed in the United States and therefore met the initial evidence requirement for this EB-2 classification under 8 C.F.R. § 204.5(k)(3)(i)(A).

[3] The registration from the U.S. Patent and Trademark Office indicates that the [redacted] name was registered to [redacted] a Florida limited liability company. The Petitioner listed this entity as her current employer on the submitted ETA Form 750, Part B, Application for Alien Employment Certification. The record includes a 2019 U.S. federal tax return for [redacted] which identifies the Petitioner as its sole shareholder.

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. The Director concluded that the Petitioner established the substantial merit of the proposed endeavor. However, for the reasons discussed below, the Director determined, and we agree, that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[4]

In support of her claim that the proposed endeavor has national importance consistent with the first prong of the *Dhanasar* framework, the Petitioner provided published articles and reports that focus on health, nutrition, and the prevalence of diet-related diseases in the United States as well as federal government policies and initiatives intended to address health issues caused by poor nutrition. This evidence includes: statistics reported by the Centers for Disease Control (CDC) on the incidence of diabetes in the overall population and within specific demographics; dietary guidelines published by the U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHS); reports on nutrition and dietary supplements and the link between dietary factors and disease; and evidence related to the President's Council on Sports, Fitness & Nutrition, a committee which "aims to promote healthy eating and physical activity for all Americans."

On appeal, the Petitioner contends that the Director did not give sufficient weight to this evidence in evaluating whether her proposed endeavor has national importance. Specifically, she asserts that "[a]ccording to *Matter of Dhanasar*, a proposed endeavor has national importance where the beneficiary seeks to further knowledge in the field, nationally important interests of the American government and/or U.S. competitiveness and it may be shown in the form of industry experts, media articles and government reports." The Petitioner maintains that the expansion of her sports nutrition company "has national importance to promoting U.S. public health initiatives in nutrition and fitness" and "the Director did not consider that the U.S. government has a vested interest in promoting nutrition initiatives." Finally, she emphasizes that "U.S. agencies such as HHS, the USDA, and the CDC provide guidelines and statistics demonstrating the national importance of nutrition in the form of food and supplements to public health given the current state of poor nutrition in the U.S., especially for the most at-risk groups prone to disease and malnutrition, such as children, pregnant women and the elderly" and households facing food insecurity.

As noted by the Director in the NOID, USCIS will consider evidence demonstrating how a specific proposed endeavor impacts a matter that a government entity has described as having national importance or a matter that is the subject of national initiatives. Here, the Director concluded that the submitted articles and government reports establish the Petitioner's endeavor has substantial merit. However, the operation of a business in an industry or sector that is the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. The Petitioner must still demonstrate the potential prospective impact of her specific proposed endeavor in

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

that area. In determining national importance, the relevant question is not the importance of the industry 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.

The Petitioner emphasizes that in *Dhanasar*, we gave significant weight to media articles and other evidence documenting the interest of the federal government in the petitioner's area of proposed research. However, the "other evidence" presented in that case included "probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests" and "detailed expert letters describing U.S. Government interest" in the petitioner's specific research. *Id.* at 892. The Petitioner maintains that she provided similar evidence, and that the Director did not properly apply the *Dhanasar* framework. However, the Petitioner did not provide this type of expert opinion evidence or otherwise explain how her endeavor impacts a matter that is a subject of national initiatives.

The submitted evidence consists of articles that demonstrate the interest of the federal government in promoting healthy eating and fitness initiatives in the U.S. population. However, none of the articles reflect the government's interest in promoting the use of the types of products the Petitioner's company sells (sports performance and fat burning dietary supplements, waist trainers, and skin firming creams) to address these initiatives. Further, although the Petitioner emphasizes the particular importance of initiatives aimed at certain "at-risk groups," the record does not demonstrate that her company's products are appropriate for or will be marketed for use by those "at-risk groups" such as "children, pregnant women and the elderly" or those facing food insecurity. To the extent that the evidence includes a marketing plan for the Petitioner's brand, the materials indicate that the product is being promoted primarily to athletes and bodybuilders.

As explained in *Dhanasar*, "we look for broader implications" of the proposed endeavor and evidence 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. The Director discussed the Petitioner's business plan and letters of interest from several individuals who indicated they would sell or distribute the [redacted] products, as well as evidence that the business intends to use bodybuilding and weightlifting athletes and social media influencers as brand ambassadors to further its reach. The Director also acknowledged that the Petitioner had received a trademark for its product name and obtained authorization to sell and distribute the products in Florida and the United States. However, the Director concluded that this evidence did not establish that the Petitioner's business has a significant potential to employ U.S. workers, that it will operate in an economically depressed area, or that it would otherwise reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. The Petitioner does not specifically address or contest these conclusions on appeal.

The record supports the Director's conclusion that the record lacks evidence that the proposed endeavor's future staffing levels and business activity would provide substantial economic benefits in Florida or in the United States, or that it otherwise has broader national implications within the field. The business plan is very limited and does not include a marketing strategy, staffing or personnel

projections, or any financial projections. Without this evidence, we cannot evaluate the proposed endeavor's impact on job creation or its overall economic impact. Although the Petitioner submitted some evidence dated between 2017 and 2019 that suggested [redacted] was already engaged in the sale of [redacted] products, the company's 2019 U.S. tax return indicates that it had no assets, income or operating expenses, and no additional financial documentation was provided. The business plan states that the [redacted] products incorporate "breakthrough technology" that makes them "superior to most of our competition" and states that the products have a market advantage because they are "better and innovative." However, these claims are not explained or corroborated by any other evidence in the record. As such, the Petitioner has not supported a claim that her proposed endeavor is likely to, for example, introduce innovations that may have broader implications in the sports nutrition field.

Although the business plan indicates that the Petitioner's business seeks to "help people to be the best version of themselves," 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 customers to impact the sports nutrition field, or the health and wellness industry, at a level commensurate with national importance.

In light of the above conclusions, the Petitioner has not met her burden of proof to establish that she meets the first prong of the *Dhanasar* national interest framework. Although the Director also concluded that the Petitioner had not established her eligibility under the second and third prongs of the *Dhanasar* framework, detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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 reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.