U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27449531

Date: JUL. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a foreign language and literature teacher and entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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, determining the Petitioner did not establish eligibility for a national interest waiver under the three-prong analytical framework. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889-90 (AAO 2016). The matter is now before us on appeal. 8 C.F.R. § 103.3.[1]

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.

The Petitioner intends to "develop[] a foreign language and special education services company, Specialized Educational Services, and Second Language Learning Institute, focusing on providing foreign language classes, and specialized student support for children with learning difficulties in the U.S. market." On appeal, as it specifically relates to the first prong of the *Dhanasar* analytical framework, the Petitioner claims her business will generate 94 jobs and generate $7.8 million in the first five years. Further, the Petitioner emphasizes her "over forty (40) years of work experience," "direct knowledge," "knowledge and connections," "extensive career," and "wide range of distinctive industry roles."

We adopt and affirm the Director's decision. *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

[1] The Director's decision only addressed the Petitioner's eligibility for a national interest waiver, which is the sole issue on appeal. Because the Petitioner did not establish eligibility for a national interest waiver on appeal, we need not remand the matter to the Director in order to make a determination on the underlying immigration classification.

squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director reviewed and analyzed the Petitioner's national importance claims under the first prong of *Dhanasar*, including her business plan and employment creation assertions.

As it relates to the Petitioner's experience and ability claims, those relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Moreover, the Petitioner must establish the national importance of her business rather than the importance of education, the language instruction industry, small businesses, entrepreneurism, and immigration.[2] The relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Further, "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.* Also, "[a]n endeavor that has particularly 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.

Upon review of the record, we agree with the Director that the Petitioner has not established her proposed endeavor sufficiently extends beyond the company and its clientele to impact the industry or the field more broadly, at a level commensurate with national importance. In *Dhanasar*, we determined 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. Moreover, the Petitioner did not demonstrate how her claimed employment and revenue projections, even if credible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. *Id.* at 890.

Because the Petitioner did 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, as a matter of discretion.[3] Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4]

ORDER: The appeal is dismissed.

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[2] The Petitioner's contentions and submissions of industry articles and reports relates to the substantial merit of the proposed endeavor rather than the national importance.

[3] *See 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).

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).