U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26386424

Date: MAY 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing manager, seeks classification as an advanced degree professional. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner's endeavor was of substantial merit and national importance, that the Petitioner was well-positioned to advance this endeavor, or that it is in the interests of the United States to waive the job offer requirement. 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 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)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner seeks to work as a marketing manager. The Director concluded that the Petitioner qualifies as an advanced degree professional, but that neither she nor her proposed endeavor meet any of the three prongs of the *Dhanasar* test.

In her initial Form I-140, the Petitioner stated that she would work in the United States as a marketing manager and listed the generic duties for this occupation as stated by the U.S. Bureau of Labor Statistics.[1] Her "professional plan and statement" did not provide any specific information about her endeavor beyond repeating these generic duties, stating that she "would love to seek opportunities within the telecommunications, franchise, and entertainment industries," and listing the ways in which her services would assist the companies she worked for. The initial filing also included, among other materials, recommendation letters from coworkers and an expert opinion letter from Professor V-L- of [redacted] State University which opines on why the Petitioner meets the requirements of the *Dhanasar* test. None of these documents provided specific information about the nature of the proposed endeavor beyond stating that the Petitioner would employ her marketing management expertise for U.S. companies. The Director issued a request for evidence (RFE) requesting, among other things, documentation showing the actual nature of the Petitioner's proposed endeavor and how it would have substantial merit and be of national importance.

In response to the RFE, the Petitioner provided a "definitive statement" stating her intentions to start a marketing company called [redacted] that would eventually employ about 14 workers in Florida and be headquartered in a HUBZone designated by the Small Business Administration.[2] She also provided a business plan for her company, recommendation letters, and documentation regarding the economic benefits of marketing and immigrant labor and investment. The Director denied the petition, concluding that the record did not establish that the Petitioner's endeavor had substantial merit or that it would have an economic or other impact rising to the level of national importance. On appeal, the Petitioner claims that the Director did not properly consider the evidence or apply the correct standard of proof. We disagree.

We acknowledge the various documents the Petitioner provided regarding the importance of her industry and occupation. However, when determining whether a proposed endeavor would have substantial merit or national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889-890. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation.") In her

[1] U.S. Bureau Of Lab. Statistics, Marketing Managers, https://www.bls.gov/oes/current/oes112021.htm.

[2] The HUBZone program provides preferential contracting consideration to businesses in "historically underutilized business zones," including economically depressed areas, qualified disaster areas, and areas where military installations were recently closed. *See generally* U.S. Small Bus. Admin., HUBZone program, https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program; 13 C.F.R. § 126. The record does not include evidence indicating that [redacted] is actually located in a HUBZone or will employ workers from a HUBZone or other economically depressed area.

initial petition, the Petitioner did not provide any information about her endeavor beyond stating her occupation and its generic duties. As noted by the Director, simply being employed in an occupation does not constitute an endeavor for the purposes of these proceedings. *Id.*

Similarly, the expert letter from Professor V-L- is not specific to the Petitioner's actual endeavor and instead states that she qualifies under the first *Dhanasar* prong because she would be employed in "an area of substantial merit and national importance," explaining the need for qualified workers to help U.S. companies negotiate Brazil's complex bureaucracies and financial and tax regulations. There is no indication in the rest of the evidence that the Petitioner has expertise in Brazilian financial or tax laws or that her endeavor would concern these matters. As a matter of discretion, we may use expert opinion letters submitted by the Petitioner as advisory testimony. However, USCIS is responsible for making the final determination regarding eligibility for the benefit sought. Where an opinion letter is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). In this instance, Professor V-L-'s letter is not in accord with the evidence of the Petitioner's experience or proposed occupation, and so we will not grant it decisive weight.

Furthermore, even if we were to accept Professor's V-L-'s letter as credible evidence of the Petitioner's endeavor, which we do not, working in an area with substantial merit does not mean that one's endeavor will have national importance. In *Dhanasar*, the petitioner's work as a science teacher was found to have substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Dhanasar*, 26 I&N Dec. at 893. Even if the Petitioner's endeavor were in an area of substantial merit, she has not established its national importance because she has not provided documentation of its prospective impact on her field. *Id.*

A petitioner must establish eligibility for the benefit sought at the time of filing. 8 C.F.R. § 103.2(b)(1). Therefore, petitioners may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (BIA 1998). The record indicates that [redacted] was incorporated on [redacted] 2022, two months after the Director issued the RFE and well after the Form I-140 was filed. Furthermore, in her initial filing, the Petitioner did not mention starting her own company, basing it in a HUBZone, or employing other workers. These assertions are all central to her claim that her endeavor will have an economic impact of national importance, and as such, are material to the petition. The Petitioner made significant and material changes to her proposed endeavor in response to the Director's RFE. Since her company and business plan were not created until after the time of filing, they cannot be used to establish her eligibility in this case, and we decline to consider them. *Id.*

Apart from the evidence relating to [redacted] which cannot establish eligibility, the Petitioner only describes her endeavor in terms of the general occupation she will work in and relies on documentation of her professional experience and the economic importance of her profession and industry. Simply stating the occupation that one intends to work in does not constitute an endeavor for the purposes of these proceedings. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1). It also does not establish what specific merits or importance, if any, the Petitioner's endeavor would have. This does not demonstrate the Petitioner's eligibility under the first prong of the *Dhanasar* test.

Furthermore, even if we were to accept the documentation regarding [redacted] as relevant, credible, and probative evidence of the Petitioner's endeavor, which we do not, it does not demonstrate that the endeavor would have an economic or other impact rising to the level of national importance. An endeavor that has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area, may be considered to have national importance. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's business plan states that the company will employ 14 workers, have a payroll of $700,458, and have $1.4 million in revenues by its fifth year of operation.[3] However, the record does not establish that this business activity would constitute a significant economic benefit to the United States, Florida, or any economically depressed region through employment levels, business activity, or trade, such that it would rise to the level of national importance.

The letters of support provided with the RFE response state that the Petitioner's company has helped clients increase their revenues, but these letters concern events that occurred after the time of filing, and so cannot establish eligibility. *Matter of Izummi*, 22 I&N Dec. at 175; *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (stating that a petition which does not establish eligibility when filed cannot be approved at a future date after a party becomes eligible under a new set of facts). The Petitioner did not provide sufficient evidence of the nature of her endeavor as of the time of filing to show that it has substantial merit or national importance.

Finally, while we acknowledge the evidence regarding the Petitioner's work experience and skills, this documentation is relevant to the second *Dhanasar* prong regarding whether she is well-positioned to advance the proposed endeavor. It does not speak to whether that endeavor, in and of itself, would have substantial merit or national importance. Because the Petitioner has not established her eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the other two prongs and we hereby reserve them. *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).

It is a petitioner's burden to establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76 (AAO 2010). In order to determine whether the Petitioner met that burden, the Director properly examined whether she provided relevant, probative, and credible evidence showing that her claims are "more likely than not" or "probably" true. *Id* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). The Director correctly concluded that the Petitioner did not meet her burden here. The petition will remain denied.

[3] The Petitioner does not provide a basis or supporting evidence for the business plan's projections of the company's expenses or sales. However, because the business plan's assertions do not establish eligibility for the above-stated reasons, we will not address them in detail.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. As such, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.