U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28430428

Date: OCT. 5, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a management consultant in the healthcare field, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer - and thus the related requirement for certification from the U.S. Department of Labor (DOL) - if she demonstrates that a waiver would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for EB-2 classification as a member of the professions holding an "advanced degree" and that she met the first prong of waiver requirements by demonstrating that her proposed endeavor has "substantial merit" and "national importance." But the Director concluded that the Petitioner did not satisfy the remaining two evidentiary prongs and thus does not merit a waiver. On appeal, she contends that the Director overlooked evidence that: she is "well-positioned" to advance her proposed endeavor; and, in her case, the country would benefit from waiving U.S.-worker protections.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that, contrary to the Director's decision, the Petitioner has not demonstrated the "national importance" of her proposed venture. We will therefore withdraw the decision and remand the matter for entry of a new decision.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the requested EB-2 immigrant visa category, either as advanced degree professionals or as noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category generally requires prospective employers to seek noncitizens' services and obtain DOL certifications to permanently employ them in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor

certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term national interest. So, we established a framework for adjudicating these waiver requests. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

The Petitioner, a Russian native and citizen, earned a medical diploma and founded a medical clinic in her home country. In 2003, she changed her career focus. She established a company that provides management consulting services to small- and medium-sized private healthcare providers in Russian-speaking countries. Since 2008, she has also served as chief executive officer of a cosmetology clinic and, since 2019, has also organized an biannual conference for health and beauty businesses in Eastern Europe.

More recently, the Petitioner formed a U.S. company to provide management consulting services to small- and medium-sized private healthcare providers in this country. She states that her proposed endeavor will: assure the operational health and competitiveness of a key segment of the U.S. healthcare industry; expand access to healthcare; spur use of technological advances; and benefit the nation's economy. She says her services are urgently needed, as the COVID-19 pandemic disrupted many U.S. healthcare businesses and exposed weaknesses in the country's medical system.

A. Advanced Degree Professional

The Petitioner submitted evidence that her Russian medical diploma equates to a U.S. medical degree. We therefore agree with the Director that she has demonstrated her qualifications for the requested immigrant visa category as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate").

B. Substantial Merit

A proposed endeavor may have substantial merit if it "has the potential to create a significant economic impact" or if it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner's proposed undertaking could improve U.S. healthcare and provide substantial economic benefits. Thus, we also affirm the Director's finding that her venture has substantial merit.

C. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

Without analysis, the Director found that the Petitioner demonstrated the national importance of her proposed endeavor. We do not defer to the Director's finding, *see Matter of Christo's*, 26 I&N Dec. at 537 n.2, and disagree.

The record contains letters from other consultants and former clients of the Petitioner in Russia, Eastern Europe, and the United States, stating that her proprietary consulting methods have helped healthcare businesses grow, even during crises. But the Petitioner has not established that her U.S. consulting business would affect the economy or the way healthcare providers do business on a national level. She submitted copies of "letters of intent" from four U.S. healthcare providers who intend to use her company's services. But the letters indicate that all the businesses are from central Florida, where the Petitioner now lives. Moreover, in response to the Director's request for additional evidence (RFE), she projected that, within five years, her U.S. business would have 44 clients and generate revenue of $4,916,222. With each client serving an average of 3,129 patients per month, she estimated that her business would affect about 1,640,100 patients. These projections do not establish that the Petitioner's endeavor would *nationally* affect the healthcare field or the economy. Also, she has not provided a detailed plan for her consulting business and has not otherwise shown that it would benefit an economically depressed area.

For the foregoing reasons, the record does not establish the claimed national importance of the Petitioner's proposed undertaking. As the Director denied the petition on other grounds, the Petitioner does not substantively address the endeavor's national importance on appeal. We will therefore remand the matter.

On remand, the Director should notify the Petitioner of the evidentiary deficiency and afford her a reasonable opportunity to respond. If supported by the record, the notice should inform her of any other potential denial grounds and provide an opportunity to respond. Upon receipt of a timely response, the Director should review the entire record and issue a new decision.

If unrebutted, our determination that the Petitioner has not established the national importance of her proposed venture would result in the petition's denial. But, because she did not receive an adequate opportunity to address this issue, we will remand the matter.[1]

[1] Because the Director will further review the petition on remand, we need not reach the Petitioner's appellate arguments regarding her positioning to advance the endeavor and the purported benefits to the country of waiving U.S. worker

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

protections. *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 did not otherwise qualify for relief).