U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28429775

Date: SEP. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a production and manufacturing engineer, seeks classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability. 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. 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 although the Petitioner qualifies for the EB-2 classification, the record does not establish that a waiver of the classification's job offer requirement is 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 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a 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 Petitioner proposes to continue her career as a production and manufacturing engineer by establishing and operating a management consulting company, [redacted] She states that this company will provide "product development, quality control, and manufacturing process enhancement consultancy" to small- and medium-sized companies in the United States.

The Director found that the Petitioner qualifies for the EB-2 classification as an advanced degree professional, based upon obtaining the foreign equivalent of a bachelor's degree followed by five years of progressive experience in the specialty. The Director also found that the Petitioner established the substantial merit of her proposed endeavor. However, the Director concluded that the Petitioner did not establish any of the other required elements of the *Dhanasar* framework, and therefore did not establish eligibility for a national interest waiver. The Petitioner appeals the Director's findings as to the national importance of the proposed endeavor, whether she is well-positioned to advance it, and whether, on balance, waiving the job offer requirement would benefit the United States.

However, as an initial matter, we disagree with the Director's finding that the Petitioner qualifies as an advanced degree professional. The record does show that, in 2016, the Petitioner obtained the foreign equivalent of a four-year bachelor's degree in production engineering. However, the record does not demonstrate that the Petitioner has at least five years of full-time progressive experience in the specialty following this degree. The Petitioner submitted letters of support from colleagues at her prior place of employment, but she did not submit any letters from prior employer(s) that specifically establish the start and end dates of her employment, her specific job title(s) and job duties, or other such information that would be needed to demonstrate five years of progressive experience. *See* 8 C.F.R. § 204.5(g)(1); *see also* 8 C.F.R. § 204.5(k)(3)(i)(B). Moreover, the Petitioner's own resume claims that she has only two years of experience after completing her bachelor's degree in 2016. *See* 8 C.F.R. § 204.5(k)(2) (requiring that when a bachelor's degree and work experience are combined to establish equivalency with an advanced degree, the degree must precede the work experience). The Petitioner would need to address this deficiency in any future proceedings where qualification as an advanced degree professional is required to establish eligibility. *See* 8 C.F.R. § 204.5(k)(2).

Moreover, the Petitioner does not appear to assert qualification as an advanced degree professional. Rather, the Petitioner claims to qualify for the EB-2 classification as an individual of exceptional ability.[2] Specifically, the Petitioner submitted evidence that she claims establishes the regulatory

[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] "Exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). An individual must initially submit documentation that satisfies at least three of six

criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to a degree, diploma, or similar award in the area of exceptional ability); 8 C.F.R. § 204.5(k)(3)(ii)(C) (relating to a license to practice an occupation); 8 C.F.R. § 204.5(k)(3)(ii)(E) (relating to membership in a professional association); and 8 C.F.R. § 204.5(k)(3)(ii)(F) (relating to recognition for achievements and significant contributions to the field).[3]

Because the Director erroneously concluded that the Petitioner qualifies as an advanced degree professional, the Director did not analyze and make a finding as to whether the evidence establishes that the Petitioner is an individual of exceptional ability. While we could remand the matter to the Director to re-evaluate whether the Petitioner is eligible for the EB-2 classification, we ultimately agree with the Director that the Petitioner has not established the national importance of the proposed endeavor, and therefore, does not qualify for a national interest waiver. On appeal, the Petitioner only addresses the national interest waiver issue; hence, we decline to reach and hereby reserve our opinion as to whether the Petitioner has established qualification as an individual of exceptional ability and thus eligibility for the EB-2 classification. *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 alternative issues on appeal where the applicant is otherwise ineligible).

We turn now to the Petitioner's request for a national interest waiver. As stated above, the Director found that the record did not establish the national importance of the proposed endeavor, as required by the first *Dhanasar* prong. Specifically, the Director concluded that the record did not show that the proposed endeavor has the potential to provide substantial positive economic effects, to broadly enhance societal welfare or cultural or artistic enrichment, or otherwise have national or global implications. The Director also noted that the Petitioner primarily focused on her own background as establishing national importance. But because the focus of the first prong is the endeavor itself, rather than the petitioner's background, the Director found that this was not sufficient to establish national importance. Finally, the Director noted that, in analyzing national importance, USCIS focuses on what the Petitioner will be doing rather than the broad, general occupational classification. Because a proposed 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 a petitioner proposes to undertake specifically within that occupation.

On appeal, the Petitioner asserts generally that the Director improperly imposed a higher standard of proof than a preponderance of the evidence and did not give due regard to the evidence in the record, including the Petitioner's resume, experience in the field, business plan, letters of recommendation, and industry reports and articles. However, the Petitioner does not support these assertions with

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categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does meet at least three criteria, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

[3] We note that although the Petitioner claims to meet four of the six regulatory criteria used in the first step of the exceptional ability analysis, the Petitioner does not explain how the evidence in its totality establishes that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the field, as required by the second step of the analysis, the final merits determination.

specificity as to how this evidence demonstrates the national importance of the proposed endeavor or how the Director incorrectly considered this evidence, and the Petitioner's unsupported assertions alone are not sufficient to establish error in the Director's decision nor meet her burden of proof to demonstrate eligibility for a national interest waiver.

As to the national importance of the proposed endeavor specifically, the Petitioner first asserts on appeal that the language of *Matter of Dhanasar* allows for a regionally focused endeavor to nevertheless establish national importance, and that we should "avoid overemphasis on the geographic breadth" of the proposed endeavor. The Petitioner is correct that the analytical framework introduced in *Matter of Dhanasar* sought to reduce the focus on the geographic impact of an endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 887. However, the Petitioner does not claim that the Director made any specific legal or factual errors related to the geographic breadth of the Petitioner's proposed consultancy business. In fact, the Director did not rely on the lack of geographic breadth in concluding that it lacks national importance. Rather, the Director concluded that the Petitioner did not offer sufficient information and evidence to establish that the proposed endeavor would have broader implications for the manufacturing industry or that it would offer substantial positive economic effects. Although an endeavor that is regionally focused may have national importance, it must still have a broad impact. *Id.* at 889.

Next, the Petitioner emphasizes on appeal her work experience and background in manufacturing and engineering as establishing the national importance of the proposed endeavor. For example, the Petitioner states that her "commitment to furthering her career in the United States . . . holds national significance" because, "[w]ith over eight years of diverse experience in the field, she has honed her skills and knowledge, equipping herself to make a remarkable impact in the industry." Similarly, the Petitioner claims that she "has acquired a distinguished reputation as a leader in her field and plans to continue her career in the United States sustaining economic growth for the U.S. market." The Petitioner claims this is "of national importance to the United States because of the ripple effects it generates upon commercial actions, the domestic job market, foreign direct investments (FDI), and ultimately, the U.S. economy."

However, the Petitioner's skills, knowledge, and reputation in the field are not self-evident of the national importance of the proposed endeavor. As the Director noted in the decision, evidence of the Petitioner's knowledge and expertise generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether they are well-positioned to advance it. *Id.* at 890. The issue here is whether the Petitioner's specific proposed endeavor—to operate a management consultancy business—has national importance under *Matter of Dhanasar's* first prong. While a petitioner's position in their field may be relevant in some circumstances in establishing the potential prospective impact of their endeavor, the Petitioner does not demonstrate on appeal that it is relevant here, even though this deficiency was specifically identified by the Director in the decision. Instead, the Petitioner merely restates the same claims made in her response to the request for evidence (RFE) without addressing the Director's findings. Without further evidence or information, we conclude that the evidence in the record does not support the claim that the Petitioner's skills and reputation in her field are of such caliber that they demonstrate that her endeavor has the potential to impact the U.S. economy at a level commensurate with national importance.

The Petitioner also claims on appeal that the projected jobs that will be created and wages that will be paid by her proposed consulting company establish its national importance, particularly given that she intends to locate the business's offices in "SBA HUBZones."[4] Specifically, the Petitioner's business plan projects that the consultancy business will generate 29 jobs and $3.08 million in wages over five years at its anticipated locations in Florida, South Carolina, and Texas. However, the business plan does not explain the methodology used to determine its estimated expenses, projected sales and income, or its staffing needs.[5] Because the assumptions in the business plan do not have a clear basis, we cannot assess whether the plan's stated projections for job creation and wages paid are credible. Moreover, even were we to assume that the stated projections are credible, the Petitioner did not explain how the creation of 29 jobs in five years has the potential to result in a substantial positive economic effect that would be commensurate with national importance, even in an economically depressed area.

Finally, the Petitioner makes general claims on appeal about the national importance of business development professionals, the national importance of entrepreneurs, and the national importance of small businesses. For example, the Petitioner asserts that "[e]ntrepreneurs are a national asset to be cultivated;" that "small business is the lifeblood of the U.S. economy;" and that "[b]usiness development and sales professionals, such as [the Petitioner] are key to companies' financial stability . . . ." But these claims, even if true, relate to entrepreneurship, small businesses, and the business development field in general, not to the Petitioner's specific proposed endeavor. As noted by the Director in the decision, in determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. These broad claims do not help establish that the Petitioner's proposed small business or entrepreneurial venture has the potential to impact the U.S. economy or the manufacturing industry on a scale commensurate with national importance.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs, as well as the Petitioner's eligibility for the EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. at 25 (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. at 526 n.7 (declining to reach alternative issues on appeal where the applicant is otherwise ineligible).

[4] The U.S. Small Business Administration (SBA) HUBZone program designates certain areas as "historically underutilized business zones" based on economic and population data. U.S. Small Business Administration, *HUBZone Program*, https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program/.

[5] The business plan states that the financial calculations are based on an "IBISworld report." Although a copy of this report is in the record, it is unclear how the report supports the business plan's projections.

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner 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.