U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28467050

Date: SEP. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a corporate human resource counselor, seeks classification as a member of the professions holding an advanced degree. *See* 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[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).

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

The Petitioner, a psychologist, stated on the Form I-140, Immigrant Petition for Alien Workers, that she intends to work in the United States as a corporate human resource counselor. In a letter of support, her counsel stated as follows:

> [The Petitioner] intends to continue her work in the discipline of human resources through her company [redacted] with the potential to create jobs for U.S. workers and contribute [to] the U.S. economy. Furthermore, her role as a corporate human resource counselor will empower small and medium business[es] in the U.S. to become more efficient and profitable in their operations by way of promoting healthy work environments that allow for happy and productive employees.

The Petitioner also submitted copies of industry articles and reports as well as letters of recommendation in support of her eligibility.

The Director determined that the Petitioner's initial filing did not identify her proposed endeavor with sufficient detail, and issued a request for additional evidence (RFE) demonstrating the proposed endeavor's substantial merit and national importance. In response, the Petitioner submitted a personal statement, where she stated that she:

> [C]reated an experimental system to address customers[']emotions, which involved immediate, need-based interaction with me as their family therapist. I made myself available to customers almost on a permanent basis through phone so that I could assist to the development of their emotions instantly. I named this system [redacted]

She further stated that she decided to disseminate her [redacted] through an online platform called [redacted] and began "expanding [her] experiment" into additional business settings other than hospital and medical environments. She concluded by stating that she intended to

continue this expansion in the field of human resources through her U.S. company, which was incorporated in Florida in 2016.

The Petitioner also submitted additional support letters and industry articles in support of her eligibility.

In denying the petition, the Director concluded that although the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the Petitioner's work would impact the regional or national population at a level consistent with national importance. The Director determined that the Petitioner did not demonstrate that the benefits of her proposed U.S. employment would reach beyond her clients to affect her field or the United States more broadly. On appeal, the Petitioner claims that the Director's decision was erroneous, and asserts that the Director erred by applying a "stricter standard of proof" when evaluating the national importance element of *Dhanasar*'s first prong and not analyzing the totality of the evidence, including her personal statement and probative research.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director thoroughly analyzed the Petitioner's documentation and weighed her evidence to evaluate whether she had demonstrated, by a preponderance of the evidence, that she meets the first prong of the *Dhanasar* framework.

In determining national importance, the relevant question is not the importance of the field, industry, or profession 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. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted articles and reports addressing the importance of human resources and its impact on the U.S. economy, particularly in the aftermath of the COVID-19 pandemic. We recognize the value of human resources services; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

Similarly, the Petitioner's personal statement emphasizes the value of human resources and human resources counseling instead of focusing on the prospective impact of her specific endeavor. The Petitioner discusses the benefits of human resources counseling, highlighting how her endeavor will help promote healthy work environments for businesses and stimulate the economy by creating jobs and revenue. However, the Petitioner does not point to any corroborating evidence that would directly link her specific endeavor to the overall economy's growth. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also provided recommendation letters from former colleagues in Brazil, who attested to the quality of her work. Although the letters praise her qualifications and professional accomplishments, the Petitioner's skills, expertise, and abilities relate to the second prong of the

Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*'s first prong.

In response to the RFE, the Petitioner submitted additional support letters from clients discussing how her [redacted] has benefitted their individual businesses. While their praise of the Petitioner's methodology is noted, the letters discuss the impact of the Petitioner's work to their own experiences rather than the required broad impact to the business and finance sector. *See id.* at 889.

We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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. Although the Petitioner recounts the value and importance of human resources counseling and its general impact on business growth, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id.* at 889.

Further, the Petitioner did not provide evidence to demonstrate how her business operations will have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner did not demonstrate that her company's operations would provide substantial economic benefits to Florida or the region or the U.S. economy more broadly at a level commensurate with national importance, nor did she demonstrate that her business operations would substantially impact job creation and economic growth, either regionally or nationally.

In addition, the Petitioner has not offered sufficient evidence that the area where her company will operate is economically depressed; that her company would employ a significant population of workers in those areas; or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Without such evidence, we cannot evaluate the proposed endeavor's impact on job creation or its overall economic impact. As such, the Petitioner has not supported a claim that her proposed endeavor stands to sufficiently extend beyond her customers to impact the human resources field at a level commensurate with national importance.

Finally, we note the Petitioner's submission of two of our non-precedent decisions on appeal, in which each petitioner sought classification as an individual of extraordinary ability and we sustained the appeals. First, these two petitioners sought employment-based first preference (EB-1) immigrant classification, which is different from the EB-2 immigrant classification sought by the Petitioner in the instant case. Second, neither decision was published as a precedent and, therefore, these decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

In summation, the Petitioner has not established that her proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

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).[2]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[2] We note the Petitioner's assertion on appeal that the Director disregarded the regulation contained in 20 C.F.R. § 656.3, making it legally impossible for an entrepreneur to file a labor certification on his or her own behalf. Since the identified basis for this decision is dispositive of her appeal, we will reserve this issue for future consideration should the need arise. *See Bagamasbad*, 429 U.S. at 25-26; *see also L-A-C-*, 26 I&N Dec. at 516, n.7.