U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37465268

Date: APR. 02, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an artistic producer and director, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* 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, concluding that the record did not establish that the Applicant merited a waiver of the job offer and labor certification requirements for EB-2 classification. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that 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 the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as 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

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner seeks to establish an arts education academy in [redacted] Ohio with future plans to expand to [redacted] New York and [redacted] Michigan. The Petitioner seeks to leverage her experience in the arts industry as an actor and producer to improve access to art education opportunities, increase arts-related tourism, and bridge the gap between arts-related careers and art education opportunities. She states that her proposed endeavor will "contribute to the cultural, social, and economic landscape of the United States" and foster "artistic excellence, promoting social inclusion, and aiding in economic revitalization." The Petitioner proposes to accomplish this goal by offering a "comprehensive suite of services aimed at artistic and personal development."

In support of her proposed endeavor the Petitioner provided a personal statement, a business plan, letters of recommendation, and information related to the arts industry in the United States. The Director determined that while the Petitioner had established the substantial merit of her proposed endeavor, she had not provided sufficient evidence to establish it rose to the level of national importance. In addition, the Director determined that the Petitioner was not well-positioned to advance her proposed endeavor or that, on balance, a waiver of the job offer and labor certification requirements were in the best interest of the United States.

On appeal, the Petitioner resubmits the evidence provided to the Director and generally asserts eligibility for a national interest waiver under the *Dhanasar* framework. The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of 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. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Petitioner's business plan anticipates that her arts instruction company will reach a total of 17 employees in year five, with payroll expenses growing from $210,000 in year one to $996,715 in year five. She also projected generating $610,000 in sales in year one, increasing to $2 million in year five. The plan does not explain how these forecasts were calculated, or adequately clarify how these projections will be realized, nor does the record contain evidence to support the business plan's financial projections. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, the lack of supporting details detracts from the probative value of the business plan.

Even if we assumed all the projections in the business plan were accurate, the record lacks evidence demonstrating that its impact would be nationally important. The Petitioner's personal statement contends that her business will address the growing need for trained arts-related positions. In addition,

the Petitioner claims that her organization will address climate change, champion diversity and inclusion initiatives, spur tourism, and foster economic revitalization.[2] However, the Petitioner did not provide documentation to support these statements that her proposed endeavor will result in substantial economic growth or cultural impact that rises to the level of national importance. The Petitioner provided letters of recommendation that focus on the Petitioner's knowledge and ability rather than on the prospective impact of her performing arts academy. These letters more appropriately address the second prong of the *Dhanasar* framework. The record does not illustrate how creating 17 jobs and generating $2 million in sales as projected in the business plan, would have substantial positive economic effects on the level of national importance. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Apart from the economic impact of the Petitioner's proposed endeavor, she stresses the cultural implications of supporting the arts and making them available to autistic and disadvantaged youth. This determination hinges on an assessment of the broader societal implications of the Petitioner's contributions, requiring she demonstrate broader benefits that extend beyond the confines of a local industry. *See Dhanasar*, 26 I&N Dec. at 893. Therefore, while the ripple effects of supporting the arts in young people may signify positive developments within a narrow area, they alone may not suffice to establish the requisite level of national importance. *Id.* at 890, 892. Thus, it remains incumbent upon the Petitioner to present compelling evidence of her capacity to significantly benefit the industry or movement as a whole, in accordance with the prevailing legal standards. We acknowledge the IBIS world article discussing art classes in the United States and their potential positive effects. However, here, the Petitioner has not demonstrated that the scope of her specific project would reach the levels required to establish a cultural or economic benefit that would rise to the level of national importance.

Because the Petitioner has not established her proposed endeavor has national importance, she is not eligible for a national interest waiver under the *Dhanasar* analytical framework. We reserve our opinion regarding whether the evidence of record satisfies the second and third *Dhanasar* prongs. *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).

The Petitioner has not established the national importance of her proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, she has not demonstrated that she is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.

[2] We note that the Petitioner cited several executive actions on inclusion initiatives, arts, and climate that have since been rescinded. *See Initial Rescission of Harmful Executive Orders and Actions*, January 20, 2025 www.whitehouse.gov/presidential-actions. To the extent the Petitioner argues national importance based on these prior executive actions, we reviewed her claims in the context of the general welfare of the United States rather than as the subject of executive initiatives.