U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30354468

Date: APR. 3, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant, seeks second preference 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 EB-2 classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2); *see also* 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. 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 and states that USCIS may, as a matter of discretion,[1] grant a petition if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and, (3) on balance, waiving the job offer requirement would benefit the United States.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the record did not establish any of the three required prongs of the *Dhanasar* framework and therefore the Petitioner did not establish eligibility for a national interest waiver. 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.

The Petitioner describes the proposed endeavor as "[d]evelopment, consulting, and training pertaining to [c]ompliance and [f]inancial [s]trategy applied to business administration, as well as providing a training and education of financial literacy for Florida high schools . . . ." The Petitioner submitted a business plan to establish a financial literacy consulting business. As to the first *Dhanasar* prong, the

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and the Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

Director concluded that the proposed endeavor has substantial merit but not national importance. After a review of the evidence in the record—including the Petitioner's business plan, an opinion letter, and various news articles about financial literacy, financial services, and other topics—the Director concluded that the Petitioner did not show that her proposed endeavor stands to sufficiently extend beyond her organization and its clients to impact the industry or field more broadly. The Director also concluded that the Petitioner did not establish that the endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. The Director noted, for example, that the business plan did not describe the number of employees the business would hire, demonstrate a business need to hire additional employees, or otherwise establish substantial positive economic effects. The Director also found that the general statements made by counsel in response to the request for evidence (RFE) were not supported by evidence. For example, regarding counsel's assertions that the proposed endeavor has national importance because it will create job opportunities, will enhance societal welfare, and aligns with government initiatives on improving financial literacy, the Director found that the various articles and reports submitted to support these claims provide only a general analysis of financial literacy, do not discuss the Petitioner's specific endeavor, and therefore do not sufficiently support these assertions. After thorough review, consideration, and analysis, the Director similarly concluded that the Petitioner did not establish that she is well-positioned to advance the proposed endeavor nor that, on balance, waiving the job offer requirement would benefit the United States.[2]

On appeal, the Petitioner counters that counsel's statements are "meticulously backed by substantial evidence" and "firmly grounded in publicly available sources and technical analysis directly relevant to the field of endeavor." In support of the national importance of the endeavor, the Petitioner primarily repeats the same claims made before the Director regarding the endeavor's potential to improve financial literacy, create jobs, and enhance societal welfare and its alignment with U.S. government priorities. However, the Petitioner does not overcome the specific deficiencies noted by the Director regarding the lack of support for these claims based upon the evidence in the record. Although the Petitioner disagrees with the Director's statement that counsel's assertions are insufficiently supported by evidence, the Petitioner does not discuss the evidence in the record with specificity, explain how it supports counsel's claims, or otherwise overcome the Director's conclusions. For example, the Petitioner does not address the Director's specific finding that the general articles and reports discuss only financial literacy and related topics, rather than the proposed endeavor and its national importance.

Following review of the record, we adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's proposed endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director's decision discussed and analyzed the Petitioner's documentation consistent with our precedent decision in *Matter of Dhanasar*.

[2] Because we agree with the Director's conclusions as to the national importance element of the first *Dhanasar* prong, and because, as we discuss below, this is dispositive of the Petitioner's appeal, we need not summarize the Director's decision as to the second and third prongs here.

On appeal, rather than specifically identifying any errors in law or fact in the decision, the Petitioner merely states that the Director was incorrect and repeats the same unsupported assertions previously made without overcoming the deficiencies noted by the Director. These assertions, however, do not overcome the basis for the denial and are insufficient to establish the national importance of the Petitioner's endeavor.

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record demonstrates the Petitioner's qualification for the EB-2 classification and whether it satisfies the second or third *Dhanasar* prongs. *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).

ORDER: The appeal is dismissed.