U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37292317

Date: APR. 3, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an aesthetician, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 the record did not establish 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 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: (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. *Id.*

[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).

II. ANALYSIS

A. EB-2 Classification

The Director found the Petitioner qualified for the underlying EB-2 classification as an individual of exceptional ability, but did not offer an analysis to support their conclusion. However, as the resolution of the issues pertaining to the Petitioner's eligibility for a national interest waiver under the *Dhanasar* analytical framework is dispositive of this appeal, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

B. National Interest Waiver

The Petitioner intends to work as an aesthetician and operate an aesthetics and health clinic in Florida. Her company, [redacted] will offer a variety of spa and beauty services tailored to clients' specific requirements, ranging from facial treatments and body massages to waxing, hair removal, epilation, eyebrow shaping, perming, eyelash extensions, and makeup services, among others.

The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under *Dhanasar's* first prong.[2] On appeal, the Petitioner asserts that the Director imposed "novel substantive and evidentiary requirements" and a stricter standard of proof than that of a preponderance of the evidence. In addition, with respect to the *Dhanasar* analytical framework, the Petitioner contends, among other things, that the Director "did not give due regard" to the evidence submitted, suggesting that the Director did not properly weigh her previously submitted resume, business plan, evidence of her work in the field, recommendation letters, and industry reports and articles, which she claims show her endeavor's national importance.

We acknowledge the Petitioner's appellate claims but, nevertheless, conclude that the documentation in the record does not sufficiently establish the proposed endeavor's national importance.[3] Further, we see no evidence that the Director imposed novel requirements or an incorrect standard of proof. The Petitioner has not elaborated on these claims or pointed to specific instances of this that persuade us otherwise.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated 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.

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[2] The Director also found the Petitioner met *Dhanasar's* second prong but did not satisfy the third prong.

[3] While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

Here, the Petitioner has not offered sufficient evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In particular, she has not persuasively shown how her company will have a broader impact in the industry or nation beyond the individual clients she will serve. While she claims her endeavor will support economic growth through job creation and tax revenue, she has not offered sufficient, specific evidence showing any substantial economic impact directly attributable to her future work. For example, according to her business plan, the Petitioner expects to employ 4 individuals with sales of $262,600 in the first year of operation, increasing to 11 employees with sales of $717,288 by the fifth year of operation. She also expects to create 38 indirect jobs by the fifth year. However, the business plan does not adequately support these projections of job and revenue creation and does not explain in detail how its forecasts were calculated or how its projections will be realized.

Moreover, even if the projections were more than conjecture, we would still conclude the Petitioner did not adequately demonstrate how her proposed endeavor would generate such significant economic activity that it rises to the level of "substantial positive economic effects" as contemplated by *Dhanasar*. For instance, she has not detailed how the claimed creation of 11 direct jobs and 38 indirect jobs by year five demonstrates a significant potential to employ U.S. workers or otherwise shows how her endeavor's potential economic impact would result in any demonstrable effect on the regional or national economy. The Petitioner also has not, for example, established that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth in Florida, where the company is located, let alone in the United States generally. Likewise, the Petitioner has not explained how her company's projected sales of $717,288 in year five demonstrates "substantial positive economic effects" in the region or nation. While any basic business activity has the potential to positively impact the economy, the Petitioner has not offered a sufficiently direct connection between her endeavor and any demonstrable economic effects in the region or nation. The Petitioner's references to abstract tax revenue, job creation, and other unspecified economic benefits rely more on generalizations about the results of typical business activity, rather than providing probative information about what the Petitioner plans to accomplish through the endeavor and how it may have national importance. The record does not demonstrate that, beyond the limited benefits provided to her prospective clients and employees, the Petitioner's endeavor would have broader implications rising to the level of national importance.

The Petitioner also stresses that her endeavor will address critical public health challenges, including stress reduction, pain management, and preventative care, which she claims align with federal initiatives like the National Health and Wellness Strategy, as well as advancing women and minorities in the workforce. The Petitioner submitted various industry reports and articles, including documents addressing the aesthetics industry and its benefits generally, trends in the field, and the importance of immigrant entrepreneurs. However, she has not demonstrated how any impact resulting from her business would have broader implications beyond her direct employees and clients.

For instance, the articles and reports do not discuss the Petitioner's specific endeavor or how it, in particular, would have a broader impact on the aesthetics industry, economy, or societal welfare for our nation rising to the level of national importance. While the Petitioner asserts that the potential for her company's "innovative approaches" to influence broader practices across the U.S. wellness sector is significant, she has neither described in detail what these innovative approaches are nor how her

work would achieve such broader national significance in the industry. And although documents showing a proposed endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives may indicate that an endeavor has national importance, merely showing that a petitioner plans to work in that industry is not sufficient, in and of itself, to establish the endeavor's national importance. *See id.* at 889 (stating that the first prong's focus is on "the specific endeavor that the foreign national proposes to undertake"). The Petitioner must still demonstrate the endeavor's potential prospective impact in that area of national importance.

We have also considered the Petitioner's claims that she will share her expertise with her employees, as well as other professionals in the United States, thus contributing to a qualified workforce and addressing the industry shortage of workers. However, in the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we also conclude that the Petitioner has not shown how her proposed endeavor will sufficiently extend beyond the clients and individuals she teaches to affect the region or our nation. There is also little evidence that her future work stands to impact or significantly reduce any claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

We have also reviewed the expert opinion letter authored by [redacted] an associate professor at the [redacted] as well as other support letters written by the Petitioner's clients, acquaintances, and potential investors. However, they provide little probative information to establish the national importance of the Petitioner's proposed endeavor. While the letters comment on the Petitioner's experience, skills, and past work, as well as the benefits and growth of the aesthetic industry generally, they do not discuss in detail why this endeavor, in particular, would have broader implications such that it rises to the level of national importance. For instance, while Professor [redacted] speculates that the endeavor will "indisputably benefit our society's study of alternative medicine, the aesthetics medicine and cosmetic surgery industry, as well as stimulate the overall economy due to the recent demand of these services," he does not offer any persuasive detail explaining how the Petitioner's work as an aesthetician operating an individual clinic in Florida would result in these claimed benefits or other broader impacts beyond the clients she will serve. Further, insofar as these letters and other evidence in the record highlight the Petitioner's expertise and accomplishments, these are considerations under *Dhanasar's* second prong. When conducting an analysis under *Dhanasar's* first prong, we focus on the proposed endeavor itself.

For all the reasons discussed, the evidence does not establish the proposed endeavor's national importance as required by *Dhanasar's* first prong.

III. CONCLUSION

As the Petitioner has not met *Dhanasar's* first prong, she has not established her eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of this appeal, we decline to reach and hereby reserve remaining issues and arguments concerning whether she has established eligibility for the underlying EB-2 classification, as well as eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.