U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30231596

Date: APR. 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a quality control analyst and entrepreneur in the field of pet apparel, 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 that the record did not establish that the Petitioner is eligible for the EB-2 visa classification or a national interest waiver as a matter of discretion. 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 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary

- 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

A. EB-2 Classification

The Petitioner asserts on appeal that the Director wrongfully stated that she does not qualify for the EB-2 classification as an individual of exceptional ability. However, as the record does not establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[2]

B. National Interest Waiver

1. Substantial Merit

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar* at 889. The Petitioner's proposed endeavor is to open and operate a quality control consulting company serving the pet apparel industry. The record includes information on the Petitioner's proposed endeavor along with articles on the importance of entrepreneurship to a healthy economy, the role immigrants play in the industry, and their success in business ownership. We conclude that the proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erroneously applying the law. She asserts the Director did not give "due regard" to the evidence submitted, specifically: the resume outlining her experience; the business plan describing her professional credentials, expertise, and accomplishments; evidence of her work in the field; letters of recommendation; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals with her profile in the field. Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did not demonstrate that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

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in nature).

[2] *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 alternate issues on appeal where an applicant is otherwise ineligible).

The Petitioner states that her proposed endeavor creates jobs, providing employment opportunities and stimulating economic growth. The business plan states that the Petitioner plans to create 11 jobs in the first year of operation and will increase to 34 direct jobs by the fifth year. In addition, she states that she will be creating 142 indirect jobs. These calculations were done using industry standards and the record does not show how her specific endeavor will create these jobs. *Dhanasar* states the proposed endeavor may show national importance by having a "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar* 26 I&N Dec. at 890. The record does not show how these jobs will be created by the Petitioner's proposed endeavor and the staffing levels themselves are not substantial enough to rise to the level of national importance.

The Petitioner asserts that her proposed endeavor will, "[i]mprove the United States' business sphere and further position the nation as a business hub within the global economy." However, the Petitioner has not provided corroborating evidence to support these claims of her business' substantial economic benefits to the United States. The Petitioner's claims of her proposed endeavor's economic impact have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide these benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376.

Additionally, the business plan shows the Petitioner intends to expand her business to multiple locations, serve multiple companies, and offer skills training sessions. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Dhanasar* 26 I&N Dec. at 893. Although the record shows the Petitioner plans to expand her business in various ways, the record does not establish the proposed endeavor will benefit more than the direct clients it will serve or that the Petitioner's business would impact the quality control industry more broadly.

On appeal, the Petitioner contends her extensive experience in the business sector and the industry reports and articles in the record show her endeavor's national importance. However, past experience is applicable to prong two analysis, on whether the Petitioner is well positioned to advance the endeavor but is not proof of national importance. In addition, the industry reports and articles on the importance of entrepreneurship to a healthy economy along with the role immigrants play in the industry and their success in owning businesses are helpful for background information and in a substantial merit claim as discussed above, however, they also do not show national importance. It is the importance of the specific endeavor we must analyze and not the industry itself.

Finally, the record contains an expert opinion letter that reiterates many of the same arguments the Petitioner makes that have been addressed above regarding the proposed endeavor, the economic possibilities, and her past experience in the field. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence 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.