U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30556884

Date: APR. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an "image strategist and personal stylist entrepreneur," seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if noncitizens demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the requested EB-2 category as a member of the professions holding an "advanced degree." *See* section 203(b)(2)(A) of the Act. But the Director concluded that the Petitioner did not demonstrate the merits of a national interest waiver. On appeal, the Petitioner contends that, contrary to the Director's decision, she established that her proposed endeavor has "national importance" and that, overall, the United States would benefit from a waiver's grant.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has not demonstrated her proposed endeavor's claimed national importance. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must demonstrate their qualifications for the EB-2 category, either as advance degree professionals or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ the individuals in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016).

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian national and citizen, earned a bachelor of fashion degree in her home country followed by more than 10 years of fashion-related employment experience. She operated a fashion consultancy and served as an independent executive sales director of a cosmetics company. She later became chief executive officer of her own company, which provided consulting services and, through online courses and workshops, trained others to hone style and personal image.

In the United States, the Petitioner proposes to establish a company and continue consulting and training others to become "image specialists." She says that these specialists would provide services to customers, such as: wardrobe consulting; personal styling; make-up artistry; and brand image consulting. The Petitioner projects that, in her U.S. company's first five operating years, the business's annual revenues would rise from $289,485 to $687,780. By the end of the fifth operating year, her "strategic plan" states that the company would have five full-time employees and one part-time worker.

B. EB-2 Eligibility

The record does not support the Director's finding that the Petitioner qualifies for EB-2 classification as an advanced degree professional. She submitted an independent, professional evaluation of her Brazilian degree. The evaluation finds the foreign credential equivalent to a U.S. bachelor's degree in fashion. She also provided letters from employers and business associates, documenting that she gained more than five years of post-baccalaureate experience in the field. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include a "United States baccalaureate or a foreign equivalent degree followed by at least five years of progressive experience in the specialty").

A U.S. baccalaureate degree, however, usually requires at least four years of college or university study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). The record does not demonstrate how many years the Petitioner studied at a Brazilian university to obtain her degree. Also, the evaluation does not detail why her foreign degree purportedly equates to a U.S. bachelor's degree. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (allowing the immigration service

to reject or afford less evidentiary weight to an expert evaluation that conflicts with other information or "is in any way questionable").

We therefore consulted the Electronic Database of Global Education (EDGE), an online resource that U.S. courts have found to be a reliable source of foreign educational equivalencies.[1] EDGE indicates that, depending on the field of study, Brazilian bachelor's degrees reflect three to five years of study. The database states that a three-year Brazilian baccalaureate "represents attainment of a level of education comparable to 3 years of university study in the United States." Thus, if the Petitioner studied only three years to obtain her Brazilian baccalaureate, she may not have the equivalent of a U.S. bachelor's degree. The Petitioner therefore has not demonstrated her status as an advanced degree professional. We will therefore withdraw the Director's contrary decision.

The Director did not consider the Petitioner's claimed EB-2 eligibility as a noncitizen of exceptional ability. But we can resolve this appeal on another basis. Thus, we decline to consider the Petitioner's eligibility as a noncitizen of exceptional ability in the first instance and will reserve review of the issue.[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate appellate issues where a noncitizen did not otherwise qualify for relief).

C. Substantial Merit

The record supports the Director's finding that the Petitioner's proposed endeavor has substantial merit. A proposed undertaking may have substantial merit whether it "has the potential to create a significant economic impact" or relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner submitted evidence that her proposed U.S. endeavor could generate revenues and jobs and empower women and minorities. We therefore agree with the Director that the Petitioner's proposed venture has substantial merit.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

[1] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a non-profit group of more than 14,000 higher education professionals in more than 40 countries. AACRAO, "Who We Are," www.aacrao.org/who-we-are; *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

[2] In any future filings in this matter, the Petitioner may submit additional evidence or argument regarding her EB-2 eligibility as a noncitizen of exceptional ability.

We agree with the Director that the Petitioner submitted insufficient evidence that her proposed U.S. endeavor would have national implications. As previously indicated, she projected that, after five operating years, her business would generate revenues of $687,780 and employ six people. The record does not establish that those figures would substantially boost the national economy. The Petitioner also has not demonstrated that her company would benefit an economically depressed area.

The Petitioner demonstrated her development of a method of training and mentoring people in the fashion field. She contends that her U.S. endeavor would "set new standards in fashion consultancy." A handful of her peers and former customers provided letters praising the system, which stresses: a client-centered approach; neurolinguistic programming; modern visual strategy techniques; emphasizing individuality; unique body perception; and training for growth. But the record does not sufficiently establish that the method represents an advancement in the fashion field. Thus, the Petitioner also has not demonstrated that her proposed endeavor could substantially affect the field.

On appeal, the Petitioner contends that her endeavor would have a substantial economic impact in the United States. She states that, in 2021, personal stylists and shoppers enjoyed a U.S. market share of about $1.3 billion. She says that, following the COVID-19 pandemic, the field has adapted to virtual consultations and remote services, providing an opportunity for future growth.

As previously indicated, however, when considering national importance, we must focus on the *particular* endeavor, not its field. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). There appears to be a healthy market for personal stylists and shoppers in the United States. But the Petitioner has not demonstrated that her *particular* venture would have economic benefits on a nationally important level.

The Petitioner also contends that her endeavor would provide "profound" benefits to U.S. society. Because appearances often dictate first impressions in our culture, she states that the work of image specialists empowers people – especially women and minority groups – by "breaking down societal stereotypes and promoting diversity and inclusivity." The Petitioner states that her endeavor would also promote gender equality and women's professional development. She says: "By offering services that help women look and feel their best, image consultants have the power to empower woman and contribute to the promotion of gender equality."

The Petitioner further argues that her endeavor would culturally and artistically enrich the United States "by promoting diversity in fashion and personal image." She says that her business would organize "fashion trips" – shopping expeditions to various cities across the United States and the world – that would function like "cultural exchange programs." The Petitioner also says that her proposed business would support various U.S. executive orders, including those promoting racial equality, supporting underserved communities, and advocating fair pay.

We agree that all these potential benefits have substantial merit. But the Petitioner has not demonstrated that her *particular* proposed venture would provide these benefits on a nationally important level. Her proposed undertaking resembles one we considered in *Dhanasar*. There, we agreed that a proposal to teach science, technology, engineering, and mathematics (STEM) courses to students at a U.S. university had substantial merit. *Matter of Dhanasar*, 26 I&N Dec. at 893. But we

found the venture lacking national importance because "the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.* As in *Dhanasar*, the Petitioner's proposed fashion and personal image business has substantial merit. But she has not demonstrated that her activities would affect the U.S. fashion field or economy "more broadly."

The Petitioner has not demonstrated that her proposed U.S. endeavor has national importance. We will therefore affirm the petition's denial.

E. A Waiver's Benefits to the United States

Our decision regarding the claimed national importance of the Petitioner's proposed endeavor resolves this appeal. We therefore hereby reserve review of her appellate argument that a waiver would benefit the United States. *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 established that her proposed endeavor has national importance. Thus, under our *Dhanasar* framework, she does not qualify for a national interest waiver, and we will affirm the petition's denial for lack of a job offer.

ORDER: The appeal is dismissed.