U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30648442

Date: APR. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the aviation supply industry, 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 Petitioner is eligible for 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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:

- 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 is an entrepreneur in the aviation supply industry. She submitted a master's degree in business administration in aviation from [redacted] in Florida. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree and we agree.

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 operate her family's aircraft parts manufacturing company in the United States. She hopes to facilitate the supply of quality aircraft parts to support the U.S. aviation industry, generate economic growth, create jobs, and help facilitate international trade and tourism. The record contains industry reports and articles on the importance of the aviation industry, the shortage of skilled workers in the field and its impact on supply, and U.S. government initiatives in support of the industry. 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 asserts that the Director's decision, "[c]ontains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." 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.

[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 in nature).

The Petitioner contends the record includes, "[a] clear, concise, and articulable proposed endeavor on which to base the assessment of the first prong as well as . . . a comprehensive national importance statement that contained ample arguments from the Petitioner regarding the national importance of the proposed endeavor." The proposed endeavor statement details a shortage of aircraft parts in the U.S. aviation industry that was exacerbated by the COVID-19 pandemic. The Petitioner states that her endeavor will be located in Central Florida and will replicate her family company, using her knowledge in aeronautical parts development and quality systems to satisfy the spare parts needs of the U.S. military and commercial aviation companies. In response to the request for evidence, the Petitioner submitted a national importance statement. She states that her proposed endeavor meets the requirement of national importance by helping the U.S. government maintain national defense capabilities, maintain readiness, and keep aircrafts operational. She highlights various government initiatives that prioritize the aviation industry and its importance to the U.S. defense sector and the economy.

Dhanasar states that a proposed endeavor, "may have national importance because it has national or even global implications within a particular field, such as certain improved manufacturing processes or medical advances." *Dhanasar* 26 I&N Dec.at 889. The record does not contain any detailed information on the national or global implications of the Petitioner's specific proposed endeavor or any advances in the industry that would be directly attributable to her and her proposed endeavor. There is information on the industry and how the industry impacts different national priorities such as national defense and the economy; however, there is no information on the possible national or global implications of her specific proposed endeavor. For example, in the Petitioner's national importance statement, she states that her, "[p]roposed endeavor consists of developing spare parts for military aircraft maintenance," and that she will, "[a]ddress key issues in the current maintenance process. . . develop new, innovative spare parts that are durable, reliable and cost effective. This endeavor involves the development of new maintenance protocols and procedures. . . and the training of military personnel and how to use the components effectively." The Petitioner does not explain how she will do this with any specificity or how she will develop spare parts in number or in an innovative manner that may have "national or global implications" within the field. The remainder of the national importance statement discusses the spare parts industry and government initiatives that support the industry but does not discuss further specifics of her proposed endeavor.

A proposed endeavor may meet the requirement of national importance by having, "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Id* at 890. The Petitioner states that the aviation industry impacts the national economy and that her endeavor will create jobs. However, the evidence in the record such as her national importance statement and her project proposal, do not detail the kind of jobs or number of jobs that will be created. It also does not detail other economic impacts that would be directly attributable to the Petitioner's proposed endeavor from which we can determine if her proposed endeavor would have the potential to employ a significant number of U.S. workers or have substantially positive economic effects or impact an economically depressed area. The project proposal does say that she plans to, "[w]ork hand in hand with the team of engineers [she knows] in the area for the development of new products." However, this does not constitute creating new jobs and does not address any economic impact her proposed endeavor might have.

The recommendation letter from [redacted] does address job creation however it does so in vague terms stating, "[h]er endeavors. . . will also create job opportunities for U.S. workers, as the aviation industry grows and demands for new products and services increase, there will be a need for skilled workers." He also states that, "[t]he aviation industry is a key component of the U.S. economy, supporting millions of jobs and generating billions of dollars in revenue each year." These statements do not estimate how many jobs will be created by the Petitioner's proposed endeavor or when they will be created. In addition, it addresses job creation and the impact on the economy in respect to the aviation industry and not necessarily the Petitioner's proposed endeavor. Without more information on how the proposed endeavor will operate and what the prospective scale of impact will be, we are unable to determine the proposed endeavor's impact beyond the Petitioner's direct clients. 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. *Id.* at 893. Without information on a broader impact on the industry itself, we cannot determine that the proposed endeavor meets the threshold of national importance.

The Petitioner also highlights industry articles and reports regarding the aviation industry being a priority for the U.S. government. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. We recognize the value and importance of the industry; however, working in an important field is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of her proposed endeavor. Although this evidence provides good background information on the industry itself, without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

The record also contains letters of recommendation that support her claims, however they too do not go into detail on the full breadth of her proposed endeavor's impact. 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 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 did not otherwise meet their burden of proof).

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.