U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32346086

Date: APR. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an architect, seeks classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* 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.

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 that a waiver of the job offer requirement is 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.[1]

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. 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

[1] The Form I-290B, Notice of Appeal or Motion, was initially assigned receipt number [redacted] The appeal was subsequently assigned a new receipt number, [redacted] and the Petitioner notified of this change by correspondence dated February 21, 2024.

interest waiver petitions. *Dhanasar* states that USCIS may, as a matter of discretion,[2] 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

The Director determined that the Petitioner qualifies for the EB-2 classification as an advanced degree professional, based upon obtaining the foreign equivalent of a bachelor's degree in architecture followed by at least five years of progressive experience as an architect.[3] *See* 8 C.F.R. § 204.5(k)(2). The Director also found that the Petitioner established the substantial merit of the proposed endeavor. The issues on appeal are whether the Petitioner has established the national importance of the proposed endeavor, whether she is well-positioned to advance it, and whether, on balance, waiving the job offer requirement would benefit the United States. The Petitioner proposes to continue her career as an architect. The Petitioner states that she intends to work on large-scale industrial, commercial, infrastructure, and residential projects and will incorporate sustainable architecture techniques in her work. The Petitioner also states that she will offer trainings in sustainable architecture and "green" building methods.

In determining that the record did not demonstrate the national importance of the proposed endeavor, the Director found that the Petitioner did not establish that her proposed employment activities stand to have a broader impact on the field. The Director concluded that the claims in the Petitioner's professional plan and in the letters of recommendation were not sufficiently supported by independent, objective documentary evidence in the record. For example, the Director noted that the record does not contain evidence to support the claim, stated by one of the Petitioner's recommenders, that the Petitioner has "revolutionized the industry with her methods." The Director also found that there was not sufficient evidence in the record to support the claim from the Petitioner's professional plan that the endeavor will "significantly contribute to the U.S. economy through industry revenue output, employment creation, and tax revenues."

On appeal, the Petitioner states that she disagrees with the Director's conclusions regarding the importance of the proposed endeavor. The Petitioner states that architects who focus on sustainable design play a crucial role in mitigating and adapting to climate change and that the Petitioner's use of sustainable techniques in her architectural projects demonstrates the broader implications of her work on the field. The Petitioner also claims on appeal that the proposed endeavor has significant potential to employ U.S. workers and will broadly enhance societal welfare.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing

[2] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] Because the Director determined that the Petitioner qualifies as an advanced degree professional, the Director did not make a finding as to whether the Petitioner established that she is an individual of exceptional ability.

processes or medical advances, may have national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889. Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon de novo review, we agree with the Director that the record does not establish the proposed endeavor's national importance. As to the Petitioner's claims regarding the importance of sustainable design and architecture methods, we conclude that these claims are not sufficient to establish the national importance of the endeavor. In support of these claims, the Petitioner relies upon evidence relating to the global problem of climate change and the potential impact that sustainable building techniques in general can have on addressing it. However, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, in determining national importance, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* The Petitioner's claims here, and the evidence in support them, help establish only the importance of the field of sustainable architecture, rather than the importance of the Petitioner's specific, proposed endeavor. Although the Petitioner states that she will offer trainings in sustainable architecture methods and will implement those methods in her own projects, this does not demonstrate that the potential prospective impact of the Petitioner's endeavor rises to the level of national importance. For example, the Petitioner has not provided evidence that she intends to develop, implement, or teach any new processes or techniques in sustainable design and architecture that could result in advances in the field or otherwise increase the impact of the proposed endeavor.

The same is true regarding the Petitioner's claim that her proposed endeavor will broadly enhance societal welfare. In support of this claim, the Petitioner again relies on claims related to the importance of sustainable architecture in general, asserting that "green buildings can enhance occupant health and comfort, improve indoor air quality, minimize strain on local utility infrastructure, and improve overall quality of life." The Petitioner further states that her projects "will create buildings that favor the health and well-being of users." Again, the Petitioner's claims focus on the importance of the field of sustainable architecture, rather than the potential prospective impact of her specific endeavor.

Finally, the Petitioner claims on appeal that the proposed endeavor has the significant potential to employ U.S. workers. In support of this, the Petitioner states that she will establish a company to offer her architectural design and training services and that this company will hire at least 13 full-time staff members within 5 years, in addition to creating additional indirect jobs by outsourcing for services such as accounting and marketing. However, we note that neither the Petitioner's original professional plan nor the updated professional plan submitted in response to the Director's request for evidence (RFE) describe specific plans to establish a company or discuss specific job creation estimates. Therefore, it is not clear from the record or the Petitioner's appeal brief what the evidentiary basis is for the Petitioner's assertion that her proposed endeavor has the potential to create a specific number of jobs. Moreover, the Petitioner has not established that the creation of 13 jobs in 5 years has the potential to result in benefits to the regional or national economy that would rise to the level of national importance as contemplated by *Matter of Dhanasar*. *Id.* As such, we conclude that the Petitioner's unsupported assertion, which appears to have been made for the first time on appeal, is not sufficient to meet the Petitioner's burden of proof. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

Although the Petitioner asserts that she disagrees with the Director and that she has demonstrated the national importance of the endeavor, the Petitioner references very little specific evidence from the record on appeal and instead primarily states broad conclusions using language from *Matter of Dhanasar* and section 203(b)(2) of the Act, stating that the proposed endeavor "will enhance societal welfare" and that it "has significant potential to employ U.S. workers." But these general, conclusory statements are made without sufficient information or evidence to support them and are, therefore, insufficient for the Petitioner to meet her burden of proof. The Petitioner does not explain how her architectural services differ from those already available on the market, offer improvements or new approaches that are replicable throughout the field, or otherwise would stand to broadly impact environment, the economy, or the architectural field beyond those clients directly served.

The Petitioner has not established the national importance of her proposed endeavor, as required by the first prong of the *Dhanasar* framework; therefore, 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 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).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude 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.