U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23038296

Date: APR. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a high school mathematics teacher, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *See* 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 employment based second preference (EB-2) permanent immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center had initially granted the petition on the Petitioner's representation of their proposed endeavor to develop lesson plans incorporating online educational platforms prioritizing adaptive and flexible learning for students in different learning environments. But the Director revoked the approval of the petition because the Petitioner did not demonstrate the national importance of their proposed endeavor.[1] As such, the Director concluded the petition had been approved in error. 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] The Director also concluded the Petitioner did not demonstrate as described in the third prong of the analytical framework we first described in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) that, on balance, it would be beneficial to the United Stats to waive the requirement of a job offer, and thus of a labor certification. But, as our decision is dispositive of the Petitioner's appeal, we will not further address the Petitioner's assertions regarding their eligibility under *Dhanasar's* third prong and reserve the issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

I. LAW

USCIS may, at any time after granting a petition, revoke that approval for "good and sufficient cause" upon notice on any ground not specified in 8 C.F.R. § 205.1 when the necessity for revocation comes to USCIS' attention. Section 205 of the Act, 8 U.S.C. § 1155, 8 C.F.R. § 205.2. We evaluate the unrebutted and unexplained evidence supporting revocation in the record at the time a notice of intent to revoke (NOIR) is issued to determine whether "good and sufficient cause" for the revocation existed. *See Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987); *see also Matter of Ho*, 19 I&N Dec. at 590 ("The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial."). The discovery of material facts and circumstances showing a petition was approved when it should not have been is good and sufficient cause for revoking the approval. *See id*, 19 I&N Dec. at 590.

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.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified

U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

On appeal the Petitioner asserts that their proposed endeavor is a lesson plan that incorporates digital platforms and meets national standards. The Petitioner contends that their endeavor is nationally important because it has broad applications in different learning environments. The Petitioner states that their proposed endeavor addresses an underdeveloped area of digital learning, offers a means to maintain the quality of education between in-person and online mediums, and provides individualized instruction for students to promote overall success.

Our authority over USCIS service centers, the office that adjudicated the immigrant petition, is comparable to the relationship between a court of appeals and a district court. So based on a de novo review we will adopt and affirm the Director's decision that the Petitioner did not demonstrate that their proposed endeavor had potential prospective impact rising to a level of national importance. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Prado-Gonzalez v. INS,* 75 F.3d 631, 632 (11th Cir. 1996) (joining "every court of appeals that has considered this issue" holding that an appellate body may affirm the lower court's decision for the reasons set forth therein); *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"). Below we provide individualized consideration to the Petitioner's appellate claims.

As the Director correctly concluded, the Petitioner did not adequately demonstrate with material, relevant, or probative evidence that their proposed endeavor was nationally important. Much of the evidence the Petitioner did submit in their appeal pertains to their personal education, skills, knowledge, and record of success. But we do not evaluate the education, skills, knowledge, and record of success when considering the national importance of a petitioner's proposed endeavor.[2] The Petitioner's endeavor is essentially a method to develop lessons plans for the educational instruction of students. The benefit of the lessons plans teachers develop are the students the teachers are teaching. As the Director insightfully observed, the Petitioner's has not adequately demonstrated the reach of the Petitioner's endeavor outside of their classroom. The Director is correct that we discussed in *Dhanasar* how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. The Petitioner's endeavor suffers from the same infirmity. Consequently, the record does not sufficiently support how the Petitioner's proposed endeavor has national or even global impact on the field of education. Nor does the record demonstrate any broader implications from the Petitioner's endeavor outside of the classroom or school system within which the Petitioner's proposed endeavor (i.e. their teaching opportunity) is housed.

[2] We turn to evaluate a petitioner's personal education, skills, knowledge, and record of success, model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals when considering how well-positioned a petitioner is to advance their proposed endeavor under the second prong of the *Dhanasar* analytical framework.

This is further underscored by the content of the letters of support the Petitioner submitted. The letter writers effusively described the positive impact of the Petitioner's lesson plans on their classroom. But letters did not adequately highlight any prospective potential national or global impact or broader implications of the proposed endeavor beyond the classroom.

Consequently, the record as it is currently composed does not indicate that these prospective benefits of the Petitioner's proposed endeavor rose to a level of national importance either through demonstration of national or even global impact, broader implications influencing matters in the national interest, or any potential positive economic effects.

III. CONCLUSION

The Petitioner' appeal does not overcome the Director's well-reasoned determination that the Petitioner did not demonstrate their eligibility for a national interest waiver. Accordingly, we affirm the Director's decision to revoke the approval of the petition.

ORDER: The appeal is dismissed.