U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28536795

Date: APR. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or 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 was a noncitizen holding an advanced degree or that she was of exceptional ability in accordance with Section 203(b)(2)(A) of the Act. Further, the Director concluded that the Petitioner had not established that a waiver of the classification's job offer requirement, and thus of the labor certification, would be 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.

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. Section 203(b)(2)(B)(i) of the Act. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[1] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

[1] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

Next, a petitioner 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. at 889, provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as 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 concluded that the Petitioner had not demonstrated that she was a member of the professions holding an advanced degree.[3] Concerning qualification for EB-2 classification as a noncitizen of exceptional ability, the Director concluded that the Petitioner had provided sufficient evidence to advance to a final merits determination but did not demonstrate in the final merits analysis that she has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Further, the Director concluded that the Petitioner did not qualify for a national interest waiver under the Dhanasar framework as she had not demonstrated that her proposed endeavor was of national importance, that she is well positioned to advance her endeavor, or that on balance it would be beneficial to the United States to waive the requirements of a job offer, and this of a labor certification.

The Petitioner states, in her professional plan, that she has 16 years of experience in "administrative, commercial, and graphic design areas for national and international markets." Prior to initial filing, she was employed as a commercial manager with a business coaching company for approximately four years. The Petitioner states that she intends to "continue [her] activities as a Commercial Manager" and that she also intends "on teaching, training, and capacitating others in the field."

With the initial filing, the Petitioner submitted her attorney's cover letter, evidence of her education and experience, employment letters, recommendation letters, and awards.

Following initial review, the Director issued a Request for Evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence to attempt to establish her eligibility for EB-2 classification and a national interest waiver.[4] The Petitioner's response to the RFE includes her attorney's cover

[2] See also 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).

[3] On appeal, the Petitioner does not contest the Director's determination that she is not an advanced degree professional. An issue not raised on appeal is waived. See, e.g., Matter of O-R-E-, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing Matter of R-A-M-, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

[4] In the RFE, the Director concluded that the Petitioner had met at least three criteria for EB-2 classification as a noncitizen of exceptional ability but that the totality of the evidence did not demonstrate that she possessed a degree of expertise

letter, additional evidence of her education and experience, job offers, support letters, and a "new Professional Plan."

In her new professional plan submitted in response to the RFE, the Petitioner states that her proposed endeavor will be to "act as a Commercial Manager in two main areas." The Petitioner relates that those areas are:

> PROPOSAL 1: MARKET EXPANSION – I will work with strategic planning in the creation of customized commercial processes according to each type of business, implementing specific plans to increase sales and increase the companies' market share. As concrete measures to achieve the desired results through my commercial management…
>
> PROPOSAL 2: DIGITAL MARKETING – Through digital marketing management, always focused on the growth of profitability and market expansion, I will identify, anticipate and satisfy customer needs, providing mechanisms and methods that stimulate this consumer's desire to seek your product/service. This is a fundamental area within commercial management in the search for sales success and economic growth for companies of all types.

The Petitioner further clarifies that her proposed endeavor will comprise her "implement[ing] [her] innovative commercial strategies to U.S. companies, to promote market expansion adopting effective digital marketing strategies."

After review of the Petitioner's RFE response, the Director concluded that the Petitioner had established the substantial merit of her proposed endeavor. We agree. However, the Director concluded that the Petitioner had not established her eligibility for the underlying EB-2 classification, that she had met the remainder of the first prong, national importance, or that she met the second or third prong of the Dhanasar analytical framework.

Regarding national importance, the Director concluded that the evidence submitted did not support the Petitioner's assertion that her endeavor will have a potential prospective impact. The Director hinges the denial on the Petitioner not providing sufficient evidence that her proposed endeavor will impact the field more broadly. Further, the Director points out that the Petitioner failed to elaborate on how, at a level that is nationally important, the Petitioner will generate jobs and tax revenue, strengthen U.S. companies, and contribute to the U.S. economy. Finally, the Director summarizes that the Petitioner had not demonstrated that her endeavor will have broader implications with the field, has a significant potential to employ U.S. workers, will have substantial positive economic effects, will broadly enhance societal welfare, or will broadly enhance cultural or artistic enrichment. We agree.

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significantly above that ordinarily encountered in the sciences, arts, or business. See 8 C.F.R. § 204.5(k)(3)(ii). Because we resolve this appeal on other grounds, we reserve our decision on whether the record demonstrates the Petitioner meets the exceptional ability standard.

On appeal, the Petitioner argues that the Director's decision "contains numerous erroneous conclusions of both law and fact." Next, the Petitioner argues that her past work in the field of commercial management "signifies that her proposed endeavor has palpable broader implications" and a "significant prospective impact." Further, the Petitioner asserts that there is "profuse documentation evidencing the national importance of her proposed endeavor." We disagree.

Regarding the Petitioner's argument that the Director's decision "contains numerous erroneous conclusions of both law and fact," the Petitioner asserts that she submitted sufficient evidence to meet the regulatory and category standards. Therefore, she asserts that the Director arrived at erroneous conclusions of law. Although the evidentiary standard in immigration proceedings is preponderance of the evidence, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. Matter of Y-B-, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); also see the definition of burden of proof from Black's Law Dictionary (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). A petitioner must satisfy the burden of production. This burden requires that a petitioner to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits. The Petitioner submitted the evidence noted above. However, as explained below, the evidence in the record and assertions are insufficient to carry her burden of production and persuasion because they do not sufficiently relate to her proposed endeavor's national importance under the first prong of the Dhanasar framework.[5]

In determining national importance under Dhanasar, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have a national importance for example, because it has national or even global implications within a particular field." Id. We also stated that "[a]n 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 at 890. We look to the Petitioner's specific proposed endeavor to determine national importance.

The Petitioner asserts that her endeavor will "broadly impact the Marketing and Sales fields and various industries." Further, she asserts that she will "help American businesses foster innovation in business and reach financial success." And the Petitioner "will guarantee efficient commercial operations and marketing planning, be it in retail or with corporate clients." Even accepting these outcomes are possible, the Petitioner has not explained how these outcomes will be realized in sufficient detail and she has not demonstrated how these outcomes will have an impact beyond herself and the clients she serves. In the same way that the teaching activities proposed by the petitioner in Dhanasar were not shown to have a broader impact on the field of STEM education, here the Petitioner has not demonstrated that her proposed endeavor would have broader implications in the field of

[5] The Petitioner's argument that her past achievements demonstrate the national importance of her proposed endeavor is without merit as past achievements relate to *Dhanasar's* second prong.

commerce on the U.S. economy beyond the clients benefiting from the Petitioner's services. Matter of Dhanasar, 26 I&N Dec. at 893.

The Petitioner argues that her prior experience, which has "impacted the business field, with widespread benefits that permeate several industries" demonstrates the national importance of her proposed endeavor. However, as noted above, the national importance component of *Dhanasar's* first prong is focused is on the proposed endeavor. The Petitioner's experience relates more specifically to second prong considerations. Likewise, the Petitioner's arguments that her work has "positively affected the Commercial Management industry in a national (if not international) range" and that she is "well-known in the industry of the proposed endeavor" does not give more detail to her specific proposed endeavor's national importance.

Similarly, the other evidence submitted does not address the national importance of the Petitioner's proposed endeavor in a meaningful way. In a reference letter written by D-A-, the author has positive things to say about the Petitioner including that she is "one of the best business managers we have ever worked with in active projects."[6] Another reference letter provided by M-D- indicates that the author met the Petitioner in January 2022 while the Petitioner was "participating in our selective process to fill an executive sales position." The letter goes on to state that the Petitioner was "initially hired to procure and sell to Latin and Brazilian supermarket and restaurant chains in So. Florida." Yet, the letter does not address the Petitioner's proposed endeavor at all. Instead, the letter points out that the Petitioner "is an essential part of this organization's efforts to grow and reach our goals in the domestic and international markets." The letters do not address how the Petitioner's proposed endeavor will have the broader implications envisioned by the first prong of the Dhanasar framework.

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the Dhanasar framework, she is not eligible for a national interest waiver and further discussion of the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[6] While we discuss a sampling of the evidence in the record, we have reviewed and considered the totality of evidence.