U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30291272

Date: APR. 26, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 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.

The Director noted in the decision that a request for evidence (RFE) was issued requesting further clarification for several issues, but United States Citizenship and Immigration Services (USCIS) never received a response to that request. On appeal, the Petitioner contends that a response to the RFE was mailed to USCIS but it arrived late due to a delay by the United States postal services. The Director's decision also addressed many of the Petitioner's EB-2 classification and her assertions regarding the national importance of the proposed endeavor. The Director discussed multiple pieces of evidence individually and identified numerous deficiencies in the evidence, and explained specifically why the evidence did not establish the Petitioner's eligibility under the *Dhanasar* framework. The appeal brief does not claim any erroneous conclusion of law or statement of fact.

We adopt and affirm the Director's analysis and decision regarding the first *Dhanasar* prong. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director

thoroughly reviewed, discussed, and analyzed the Petitioner's EB-2 classification claims and the three prongs of *Dhanasar*.

On appeal, the Petitioner contends that the response to the RFE was mailed to arrive to USCIS by the due date, but it arrived late because of a delay with the postal service. However, the Director noted, and service records indicate, that USCIS never received a response for this RFE. The Petitioner on appeal did not provide sufficient evidence to establish that a response to the RFE was in fact mailed to USCIS, and within the required due date.

Further, while the Petitioner claims she will pursue her work as a business executive and educator, the record does not adequately show through supporting documentation how the Petitioner's services and improvements stand to sufficiently extend beyond her prospective clients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The petition will remain denied.

The Petitioner's appeal does not sufficiently address or contest the eligibility issues the Director found the petition will remain denied. Because the Petitioner did not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver, as a matter of discretion.[1] Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[2]

ORDER: The appeal is dismissed.

[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).

[2] *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 alternate issues on appeal where an applicant is otherwise ineligible).