U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32478981

Date: AUG. 01, 2024

Appeal of Texas 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 either a member of the professions holding an advanced degree or an individual 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 the Petitioner's eligibility for the requested national interest waiver. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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 establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies for the requested EB-2 immigrant classification as an advanced degree professional, but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework and dismiss the appeal.

The first *Dhanasar* 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*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have 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

The Petitioner initially indicated that she intended to work as a general and operations manager in the United States to advise U.S. companies across a variety of industries "on how to properly plan, direct, and coordinate the operations of public and private sector organizations." She asserted that her knowledge and background would be especially helpful for U.S. companies doing business or planning to conduct business internationally. In support, the Petitioner provided a personal statement, letters of recommendation, industry articles discussing various topics including the field of general and operations managers and the importance of operations managers and innovation to business growth, as well as an offer letter from a U.S. consulting company indicating its intent to employ her as its director of operations.[2]

[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] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

In response to the Director's request for evidence (RFE), which requested clarification of the proposed endeavor and its national importance, the Petitioner stated her intention was to operate her own consulting company, [redacted] to offer "international relations, foreign trade, and business development consulting [services] to U.S. companies." In support, she submitted a business plan detailing her company's services and her plans to create "value chains between Turkey and the U[nited] S[tates]" by providing business consultancy for Turkish companies planning to establish operations in the United States and U.S. companies establishing operations in Turkey. Additionally, she planned to offer trade events to connect U.S. companies and Turkish companies. According to the business plan, the company would be based in [redacted] Florida and the Petitioner would serve as the company's chief executive officer and head consultant.

The Director determined that the Petitioner's business plan and RFE response constituted an impermissible material change to her proposed endeavor. And, citing to *Matter of Izummi*, 22 I&N Dec.169, 176 (Assoc. Comm'r 1998), the Director informed the Petitioner that she could not make material changes to a petition to conform to USCIS requirements. As a petitioner must establish eligibility at the time of filing a benefit request,[3] the Director did not consider the business plan as probative evidence establishing the Petitioner's eligibility under the *Dhanasar* analytical framework. In addressing the other evidence in the record, including the numerous industry reports, the Director concluded the Petitioner's proposed endeavor of working as a general and operations manager was not nationally important because it would not result in broader implications to her field or result in the economic benefits claimed.

On appeal, the Petitioner does not contest the Director's determination regarding the material change of her endeavor, and instead generally asserts that the Director did not apply the correct standard of proof and "imposed novel substantive and evidentiary requirements" without pointing to specific examples of how the Director imposed these requirements or explaining the ways in which the Director erred in their analysis of the evidence. Notably, the Petitioner's appellate brief does not specifically address the Director's analysis regarding the national importance of her proposed endeavor, and although Petitioner's appellate brief contains a quote which she purports is from the Director's decision, the quoted language does not appear in the Director's decision. Instead, the Petitioner generally reiterates the same arguments made in her response to the Director's RFE.

As a preliminary matter, because the Petitioner has not contested the Director's conclusion regarding the material change to her endeavor, we deem this matter waived.[4] As such, we will not consider the Petitioner's business plan on appeal and will focus our analysis on her statements and evidence regarding her initial proposed endeavor of working as general and operations manager for various U.S. companies. We nevertheless note that the Petitioner's business plan submitted in response to the RFE, even if considered, does not establish the national importance of her endeavor as any benefits derived from the Petitioner's services would be limited to her immediate customers rather than resulting in broader implications to the field. Moreover, while the Petitioner's business plan includes employment and financial projections, the business plan provides little explanation and objective basis of these

[3] *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

[4] 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, 657, n.2 (BIA 2012)); *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005) (concluding that when an appellant fails to address or offer an argument on an issue, that issue is waived).

projections and the Petitioner did not sufficiently explain and support with documentary evidence how the employment and revenue projections would impact the area of intended operations.

And with respect to the standard of proof in this matter, we are not persuaded by the Petitioner's assertion that the Director applied a higher standard of proof. The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). As stated, the Petitioner did not identify how the Director applied a higher standard of proof, but upon review, we conclude the Director properly analyzed the relevant evidence in the record under the preponderance of the evidence standard.

Upon de novo review, we disagree with the Director's conclusion regarding the substantial merit of the Petitioner's endeavor and withdraw this determination. The record contains sufficient documentation, including industry reports establishing the importance of the general and operations management field as well as the importance of operational management to the success of businesses in the United States. As such, we conclude that the record supports the substantial merit of the Petitioner's proposed endeavor. However, while the Petitioner has established that the proposed endeavor has substantial merit, we agree with the Director that the record does not demonstrate its national importance.

On appeal, the Petitioner asserts that her education and professional experience will benefit U.S. companies needing her specialized skills in operations and management. Similar assertions are also made throughout the record in the recommendation letters and the expert opinion letter submitted before the Director, but a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor. While the expert opinion letter discusses the Petitioner's experience at length, , the letter does not address the broader implications that would be directly attributable the Petitioner's work, and therefore is not relevant, probative, and credible evidence establishing the national importance of her endeavor.[5] Similarly, the letters of recommendation do not analyze the Petitioner's specific proposed endeavor or offer evidence of its impact, beyond commenting on her expertise.

And, while the Petitioner claims that her work will ensure the United States stays competitive and will produce income for the U.S. economy, she supports these assertions by primarily relying on the

[5] USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Id., see also Matter of D-R-, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, much of the content of the expert opinion letter lacked relevance with respect to the national importance of the Petitioner's specific proposed endeavor.)

industry articles in the record discussing the field and the impact of foreign-born entrepreneurs in driving innovation in the United States, but this evidence is also unpersuasive. When evaluating the national importance of a proposed endeavor we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake" rather than the industry or the collective impact of entrepreneurs. *See Dhanasar*, 26 I&N Dec. at 889. As the research cited in the Petitioner appellate brief discussing the economic impact of immigrant entrepreneurs does not discuss the Petitioner nor her plans to work as a general and operations manager, they are do not establish the national importance of her endeavor.

Finally, although the Petitioner's statements in the record reflect her intention to generally provide services to direct and coordinate the operations of various companies, leading to substantial business growth, we agree with the Director that the record does not sufficiently show that the benefits resulting from the Petitioner's work would impact the industry beyond the immediate benefits provided to her potential employers or customers. 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 the field more broadly. *Id.* at 893. Similarly, the Petitioner's general assertions of improving company's operations do not establish that the Petitioner's proposed endeavor stands to sufficiently impact the field more broadly at a level commensurate with national importance. Further, she has not demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

For all the reasons discussed, the evidence does not establish the substantial merit or national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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 an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.