U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32846988

Date: AUG. 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a social and community service manager, 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 that the Petitioner was eligible for a national interest waiver of the job offer requirement. 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.

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:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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.

The first 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*. at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 890-91.

II. ANALYSIS

The Petitioner is social worker who intends to work as a social and community service manager. She plans to operate and manage a nonprofit organization in Central Florida primarily focused on mental health and access to benefits for the Hispanic community.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that while the record established that the proposed endeavor had substantial merit, the national importance of the endeavor had not been demonstrated under prong one. The Director also determined that the Petitioner was not well positioned to carry out the endeavor under prong two, and that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that Her Endeavor Has National Importance

On appeal, the Petitioner argues that her endeavor will have the required impact, noting that "similar initiatives, undertaken by renowned organizations, have already yielded positive outcomes in the field." She contends that she will replicate these successful models within Hispanic communities. She contends that her work will include training and educating community members, and she notes a number of impactful areas that her work will positively contribute to, including economic growth and social inclusion. She also stresses the importance of professionals with her expertise given the growing mental health crisis among youths and an overall deficit of available social workers nationwide. [2]

In support of the endeavor's national importance, the Petitioner has submitted evidence including, but not limited to: a business proposal; her academic credentials, certificates, and training; her prior work experience in the social work field; expert evaluations of her educational credentials; details of proposed projects to be carried out by her NGO; and other documentation related to her NGO, including social media posts and her volunteering activities.

The Petitioner has not established that her proposed endeavor has a prospective potential impact rising to the level of national importance. The Petitioner highlights the importance of social work, especially to youths and families in marginalized communities. She also stresses that the nation does not have enough social workers to meet current needs, and highlights the positive outcomes attained by similar initiatives. Throughout the record, the Petitioner points to her background, education, and experience in her field. The Petitioner's knowledge, skills, and experience in the field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor has national importance under *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. The individuals interacting with a social work NGO may certainly find these services valuable; however, more is required for a national interest waiver. The Petitioner's assertions regarding the positive impacts from other initiatives, and her assertion of parallel benefits to be gained by her endeavor, is unsupported by independent evidence and our ability to evaluate it is limited.

We are also unable to conclude that the other factors outlined in *Dhanasar* have been met in this case. Beyond generally asserting the economic benefits, societal, and community benefits that a social work organization can offer, the Petitioner has not argued that her proposed endeavor would have "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area." *Id.*

Because the documentation in the record does not establish the national importance of the proposed endeavor, as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. *See INS v. Bagamasbad*, 429

[2] The Petitioner also argues that she is well-positioned to carry out the proposed endeavor. The appeal does not address the Director's decision on prong three of the *Dhanasar* framework and this issue has been waived. However, to ensure clarity, we will fully address the Petitioner's eligibility under prong 1.

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 did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because she has not met the first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.