U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31283647

Date: AUG. 05, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur with a background in kinesiology, 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.

On appeal, the Petitioner provides copies of additional AAO decisions. She argues that she has met the requirements of a national interest waiver. Specifically, she contends that she has demonstrated the national importance of her endeavor, which will provide kinesiology services "in the majority" for rural patients who lack healthcare access. She argues that she did demonstrate the broader implications, substantial positive economic effects, and significant potential to promote employment in the United States that her endeavor would provide. She also asserts that the Director erred by requiring her to submit a labor certification, as she is unable to file such a certification as a self-employed entrepreneur. Finally, the Petitioner contests the Director's analysis of the record, contending that a stricter standard of proof was applied to her case than the appropriate preponderance of the evidence analysis.

We adopt and affirm the Director's decision and analysis of the first prong of the *Dhanasar* framework. *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 Petitioner disagrees with the Director's evaluation of her evidence and asserts that she met the requirements of *Dhanasar*'s first prong. We disagree; the Director's decision considered the available evidence and the Petitioner's arguments before determining that the national importance standard had not been met, and we see no error in the determination. The Petitioner has not provided details to support her assertion that the Director applied an incorrect standard of proof, and we see no evidence of this in the Director's decision. We have also reviewed the decision for an indication that the Director required evidence, such as a labor certification, not required by regulation. The decision does not lay out such a requirement. The Director appropriately referenced a labor certification under prong three, which calls for adjudicators to determine whether, on balance, it would be beneficial to the United States to waive the requirements of a job offer and attendant labor certification.

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 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).

ORDER: The appeal is dismissed.