U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32547565

Date: AUG. 06, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a logistics manager consultant, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had established eligibility for a national interest waiver. The Petitioner filed two subsequent motions to reopen or reconsider with the Director, both of which were denied. 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).

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).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] 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 the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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,[3] 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.

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

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).
[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[3] *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).

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 a logistics manager consultant. She intends to advance her career in this field and open a pharmaceutical logistics consulting company. The Director found the Petitioner qualified for EB-2 classification but determined that she had not established eligibility for a national interest waiver. The Petitioner contests this analysis, arguing that she has established her eligibility for the waiver. After de novo review, we will withdraw the Director's EB-2 classification finding; the Petitioner has not established eligibility for the classification. In addition, the Petitioner is not eligible for a national interest waiver under prong one of the *Dhanasar* framework.

A. The Petitioner is Not Eligible for EB-2 Classification

The Petitioner sought EB-2 classification as an individual of exceptional ability. After the Director issued a request for evidence (RFE), the Petitioner also asserted eligibility as an advanced degree professional. The Director found the Petitioner qualified as an advanced degree holder. After review, we withdraw the Director's determination; on the record provided, we are unable to conclude that the Petitioner has obtained either a Bachelor's degree followed by five years of progressive experience, or a degree above that of a bachelor's degree.

i. The Petitioner Has Not Established That She Is an Advanced Degree Professional

The Petitioner has provided two degrees from [redacted] an associate's degree in international logistics, and an associate's degree in international trade. Both degrees were awarded in May 2013. The Petitioner has also provided a certificate of completion for a "Specialization level – MBA in Project Management." This document notes that she fulfilled the requirements and "awaits the issuance of its Certificate of Completion." The certificate provides a list of courses and indicates that the Petitioner completed a workload of 444 class hours. In addition, the Petitioner submits proof of completion of other certificate and continuing education coursework.

We are unable to conclude that the Petitioner's submitted educational degrees are equivalent to at least a bachelor's degree. While the Petitioner has provided proof of completion of two degrees in the United States, these are for associate's degrees. We have reviewed the Petitioner's certificate from Brazil. The certificate implies that the coursework was completed at a post-graduate level and designates itself as an "MBA in Project Management", but we are unable to determine the length of study from the submitted documentation. The Petitioner did not submit additional evidence before the Director to allow us to evaluate the parameters of this program or determine its equivalency in the United States. Although we acknowledge the Petitioner's commitment to education, she has not demonstrated that she obtained the equivalent of at least a Bachelor's degree in a single course of study on the current record.

ii. The Petitioner Has Not Demonstrated Exceptional Ability

The record also does not demonstrate that the Petitioner qualifies as an individual of exceptional ability. In the RFE, the Director advised the Petitioner that she was required to provide evidence of at least three of the following criteria: a degree, diploma, or similar award relating to the area of exceptional ability; evidence from current or former employers demonstrating ten years of full-time experience; a license to practice the profession or certification for a profession; receipt of a salary or remuneration demonstrating exceptional ability; membership in a professional association; or recognition for achievements and significant contributions to the industry of field. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Director determined that the Petitioner had obtained a degree relating to the area of exceptional ability. However, the RFE noted that the five remaining categories had not been met.

In response, the Petitioner addressed four of the remaining regulatory criteria. *Id.* She indicated that she had ten years of full-time experience. She also cited to letters of recommendation submitted with the Petition as additional proof of employment. The Petitioner next argued that she had a license to practice her profession or occupation, as shown by her work and social security card. As proof of remuneration demonstrating exceptional ability, she again referenced her work and social security card, as well as providing pay history. She noted that her pay was double the national average monthly salary. She directed USCIS to review the letters of reference for proof of the recognition of her achievements and significant contributions to her industry.

The Petitioner has not demonstrated that she meets at least three of the criteria required for classification as an individual of exceptional ability. The Petitioner did not claim, and the evidence does not reflect, that she is a member of a professional association. Next, the Petitioner's proffered work experience is not equivalent to at least ten years. The Petitioner noted that she completed a paid internship from April 2013 to May 2014, then she worked at a company from May 2014 to August 2017 and again from September 2018 to August 2021. This encapsulates less than ten years of experience.

The evidence is also insufficient with respect to the Petitioner's license to practice her profession or certification for a particular profession or occupation. The work and security card information provided by the Petitioner lists her prior work experience and salary. However, it does not list licenses or certifications. While the Petitioner notes that this document is mandatory for anyone who provides a service in Brazil, we have not been provided with evidence to conclude that the existence of this document is equivalent to proof that a worker has obtained a license or certification.

Finally, the Petitioner has not provided sufficient information to conclude that her salary or remuneration evinces exceptional ability. The work and security card confirms her salary but does not draw comparisons to general pay in the occupational field. The cited recommendation letters speak highly of the Petitioner's work but do not reach conclusions regarding her salary. The Petitioner has also included a search result for logistics consultants showing a salary range lower than that received by the Petitioner. However, the report does not provide information on which population was searched, other than noting a search for "logistics consultant." In addition, only the salaries for small businesses were included in the report, although the report implies that mid-sized and large businesses offer higher wages.

B. The Petitioner Does Not Qualify for a National Interest Waiver

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. The Director then dismissed two motions to reopen and reconsider. In the initial decision, the Director determined the national importance of the endeavor had not been demonstrated under prong one; this determination was upheld in the subsequent motion decisions.[4] We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

On appeal, the Petitioner argues that her endeavor will have the required impact, noting that she is an an expert in the logistics field, and that she will offer training as well as consulting services in the pharmaceutical logistics sector. She contends that her business plan clearly lays out her intentions to reduce costs in the pharmaceutical industry and provide positive outcomes for small- and medium-sized businesses. She also stresses that she will mentor and disseminate knowledge to emerging professionals, with approximately 200 individuals receiving training annually. She indicates that this work will be undertaken in a nationally important field with strategic importance on the supply chain.

In support of the endeavor's national importance, the Petitioner has submitted evidence including, but not limited to: a business plan; an expert opinion; academic credentials, certificates, and training; her prior work experience; communications from LinkedIn showing interest in her logistics work; and articles and reports on the logistics and pharmaceutical industries.

The Petitioner has not established that her proposed endeavor has a prospective potential impact rising to the level of national importance. 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 Petitioner highlights the importance of logistics and emphasizes its role in protecting the supply chain. She also stresses the benefits to logistics consulting for businesses of all sizes. The businesses who would receive consulting services, or the individuals receiving training, may certainly find the Petitioner's services valuable; however, more is required for a national interest waiver. We are unable to conclude from the current record that the Petitioner's endeavor would impact the logistics field or otherwise have a sufficient prospective impact.

We are also unable to conclude that the other factors outlined in *Dhanasar* have been met in this case. The Petitioner has generally asserted the economic benefits that a pharmaceutical logistics organization can offer. She also contends that her endeavor will have a national impact, as she will

[4] The Petitioner contends that the Director failed to evaluate her final proposed endeavor of operating and opening her own logistics consulting company. She argues that the Director erred in not analyzing her business plan and expert evaluation, as this was a clarification, but not a material change, of her proposed endeavor. She asserts that she established eligibility "since the inception of my initial application." However, the Director indicated that this material was considered in the motion response.

directly employ individuals as well as creating indirect jobs. However, the Petitioner has not demonstrated that her proposed staffing levels reflect a "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 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 she is an advanced degree professional or an individual of exceptional ability and, therefore, has not established her initial eligibility for EB-2 classification; the Director's decision on this eligibility criterion is withdrawn. 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.