U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32457136

Date: AUGUST 6, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a travel agency owner, 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. 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 the Petitioner did not establish eligibility for a 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.

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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

A. Substantial Merit and National Importance

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. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

The Director determined that while the Petitioner established that the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance as set forth under the first prong of the Dhanasar analytical framework. We agree, for the reasons explained below.

The Petitioner asserts that her proposed endeavor is "to work as a businesswoman in the field of tourism and travel –an industry in which I hold over 18 years of experience." She states that she intends to (1) provide travel advice for all types of audiences, "with an emphasis on two types of customers (special needs individuals, and business-to-business (B2B);" (2) consult and train "small businesses and non-profit organizations in all administrative and marketing areas;" and (3) provide "rental vacation homes for those traveling throughout the United States, through advancing construction activities in the country." The Petitioner's business plan indicates that her company is designed to provide travel advice to people located all over the world, but the main focus is on "travelers located in Brazil who want to get to know deeply underexplored places in the United States, contributing to the Tourism Industry by increasing the number of Brazilian tourists visiting the U.S., but also positively influence many other facets of the domestic economy." The business plan includes a sales forecast providing that the business is "expected to have total sales of 2,299,200 and hire 10 professionals in the first 5 years of operations." She also notes that "in the long-term, through my company mentioned above, I will add other services to our skill set. Specifically, I will offer consulting services where I will provide services to small and mid-size businesses that encourage travel, tourism, and hospitality activities." In addition, she states that "[a]s an additional project in the country, I would create economic activities in the area of civil construction (maintenance, renovation, sale, and rental of vacation homes). This is not my main endeavor in the country, but a way to create additional economic activities."

On appeal, the Petitioner asserts that the Director erred by not considering the evidence under the preponderance of the evidence standard articulated in Matter of Chawathe. Supra at 369.

Specifically, she contends that "the demonstrable benefits of [her] endeavor must be assessed together based on a preponderance of the evidence. An assessment of the projection of the U.S. workers [she] intends to hire to support her U.S. business must also be evaluated collectively along with the projections of the revenue, sales forecasts, profits, and rate of growth." She further asserts that the Director erred by focusing on the geographic scope of the endeavor – her initial planned activities in Georgia through an individual company – rather than on the potential prospective impact of the endeavor, such as the intended consulting services to other business "as well as generating increased engagement from customers with supporting industries such as hotel, food, and aviation."[2]

Here, the Petitioner relies primarily on the importance of the travel and tourism industry to the U.S. economy. However, this misapplies the Dhanasar framework. The Petitioner states that her business will be based in Georgia and she plans to launch "a marketing campaign to make the company known and attract potential customers" as well as "register with hotels, amusement parks, travel operators, travel associations, IATA, and airlines." She also maintains that she is "already affiliated with some tour operators, including Avoya Travel, and Nexion Travel Group, where we have been negotiating services and closing partnerships." Although the Petitioner contends that her endeavor will "significantly stimulate activities in the travel and tourism industry in the United States, motivating the substantial recovery of the economy in this sector; as well as in ancillary activities involving the field, such as assisting the improvement of rental properties, and consulting on the improvement of management practices of other companies in the country," her endeavor does not include any specific plans or demonstrate that the benefits to the regional or national economy resulting from her endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Instead, the Petitioner "supports her statements with numerous industry reports and articles" and "backs up her proposed endeavor by explaining trends in the industry, and how each of her planned activities provides economic benefits to the country – including the hiring of U.S. workers – both directly and indirectly."

The record does not indicate by a preponderance of the evidence – that it is more likely than not – that the Petitioner's endeavor will "produce significant national benefits, due to the ripple effects of her professional activities" or "present significant benefits to the U.S. economy." Generalized conclusory statements that do not identify a specific impact to the field have little probative value.[3] The Petitioner has not provided corroborating evidence, aside from claims in her statements and her business plan, that her business's activities stand to provide substantial economic benefits to the region of Georgia or the United States, and her statements are not sufficient to demonstrate her endeavor has the potential to provide economic, societal, and security benefits to the United States. We recognize the importance of the travel and tourism industry; however, the Petitioner's stated intention – to provide travel advice to clients with a focus on increasing the number of Brazilian tourists who "want to get to know deeply underexplored places in the United States" – coupled with reports and articles regarding the significance of travel and tourism to the U.S. economic development is insufficient to establish the

[2] The Petitioner also asserts that in a decision related to a previously filed Form I-140, the Director acknowledged that the evidence in the record established the regulatory requirements for substantial merit and national importance. However, we are not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior determinations or approvals that may have been erroneous. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988).

[3] *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

national importance of the Petitioner's specific proposed endeavor. The Petitioner has not shown through independent and objective evidence how her proposed endeavor stands to sufficiently extend beyond her potential clients or how her business "will help increase the flow of money in the U.S. on a national level which will contribute to U.S. gross domestic product." Further, the economic benefits that the Petitioner claims will result from her endeavor depend on numerous factors and the Petitioner does not offer a sufficiently direct evidentiary tie between her proposed business's travel services and the claimed economic results.

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. 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.