U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32906555

Date: AUG. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a soccer director, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

The Petitioner proposed to establish and serve as the CEO for [redacted], a non-governmental soccer organization offering youth and community development, and health promotion programs. The Petitioner asserts her organization could help refugee and newcomer youth integrate into communities and offer opportunities to displaced and marginalized youth. The Petitioner believes her prior work for the [redacted] in the positions of administrator, coordinator, and director, in the soccer industry have equipped her for this endeavor.

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 Director determined that although the Petitioner had demonstrated the substantial merit of her endeavor, she had not established its national importance to satisfy prong one of the *Dhanasar* framework. On appeal, the Petitioner asserts the Director's denial misapplied the preponderance of evidence standard and national interest waiver criteria, as the evidence of record demonstrates she is a member of a profession holding an advanced degree who merits a national interest waiver. Specifically, the Petitioner claims the Director "completely disregard[ed]" her submitted business plan and erroneously conflated the analysis of her endeavor's positive economic effects with whether these effects take place in an economically depressed area.

But in their decision, the Director specifically referenced the Petitioner's submitted business plan and relied upon it to specify the details of the Petitioner's endeavor. The Director further referenced the Petitioner's business plan in discussing its employment, revenue, and expansion projections. We also do not find the Director conflated the analysis of the Petitioner's endeavor's positive economic effects with whether the effects would be in an economically depressed area. Rather, the Director determined overall it was "not apparent that the specific proposed endeavor would affect any region where she [would] pursue her specific proposed endeavor or the United States' tax revenue, or their economies more broadly at a level commensurate with national importance." The Director also indicated that as the Petitioner only generally identified the state in which she plans to pursue her endeavor, the Director could not conclude whether the Petitioner was pursuing her endeavor in an economically depressed area. The Director further could not conclude the specific proposed endeavor would lead to the employment of a significant population of workers in the area or that the region would gain a substantial positive economic benefit through employment levels, business activity, investment, or related tax revenue as contemplated by *Dhanasar*.

The Petitioner asserts the Director failed in their consideration of the record, as the Director's request for evidence analyzed the submitted letters of recommendation for national importance. The Petitioner contends the letters of recommendation were submitted, not to demonstrate national importance, but to support the additional *Dhanasar* prongs outlined above. However, in making this assertion, the Petitioner implicitly concurs with the Director's statement that her letters of recommendation "do not

. . . meaningfully demonstrate how [the Petitioner's proposed endeavor] would have national importance." Accordingly, the Petitioner has not shown the Director erred in this analysis.

The Petitioner reasserts on appeal the factors she claims demonstrate her endeavor is of national importance and that, on balance, it would be beneficial to the United States to waive the requirement of a job offer, and thus, labor certification. However, after reviewing the entire record, we adopt and affirm the Director's determination relating to the national importance requirement under *Dhanasar*'s first prong. *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 the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Martinez-Lopez v. Barr*, 943 F.3d 766, 769 (5th Cir. 2019) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our determination of her eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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.