U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31678893

Date: AUG. 07, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a bioanalyst, high school teacher, and entrepreneur, 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that the Petitioner was eligible for and merited a national interest waiver as a matter of discretion. 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).

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

Id.

II. NATIONAL INTEREST WAIVER

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree as required for underlying EB-2 classification. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

With respect to her proposed endeavor, the Petitioner initially indicated, through counsel, that she intended to work in the United States "as a professor and educator who will improve education and training programs in [the] area of bioanalysis, natural sciences, and biology," specifically by contributing to "the continuous improvement of the U.S. healthcare system, producing a new workforce…especially in the field of Medical Laboratory Technicians [and] Medical Laboratory Scientists." In response to a request for evidence (RFE), the Petitioner provided an updated Form I-140 listing biological technician as her proposed employment in the United States, but also stated, through counsel, that she intended to work "as a bioscience expert and consultant who will improve recruiting, education and training programs in the area of bioanalysis, natural sciences, and biology," particularly for professionals and companies focused on medical laboratory sciences. She also claimed she would popularize science, technology, engineering, and mathematics (STEM) "among [the] younger population." The Petitioner provided a business plan wherein she stated she was creating a consulting company with an investment of funds totaling "upwards of $10,000" with the "goal to empower Medical Laboratory Technician[s] (MLT) or Medical Laboratory Scientist[s] (MLS), educators, institutions, and students by providing them with the knowledge, tools, and strategies needed to excel in the captivating world of biology." The plan further reflected that the company would offer specialized services aimed at improving natural sciences in the United States including curriculum development, teacher training and development, science program evaluation, and providing consultancy and advisory services to medical laboratories and educational institutions.

The Director concluded, in part, that the Petitioner did not provide specific insight as to her proposed endeavor. We acknowledge the proposed endeavor as set forth in the Petitioner's initial filing and as clarified in response to an RFE indicates her intentions to work in various capacities, including as a professor, educator, and consultant. We find, however, that while the Petitioner's RFE response elaborated on her proposed endeavor, the record reflects her overall intention to work as a consultant providing educational and training services in the fields of bioanalysis, natural sciences, and biology,

[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).

including for medical laboratory technicians and scientists, and her business plan likewise reflects her proposal to provide such services through her own consulting business. Consequently, the Petitioner has sufficiently articulated a proposed endeavor to form a basis for evaluation under the *Dhanasar* analytical framework, and we therefore withdraw the Director's determination to the contrary.

The Director further concluded that the Petitioner did not establish her proposed endeavor has substantial merit and is nationally important, or that on balance, waiving the job offer requirement would benefit the United States under *Dhanasar* prongs one and three. On appeal, the Petitioner claims the Director erred in its conclusion and asserts that the Petitioner meets all three prongs of the *Dhanasar* analytical framework.

As noted above, to establish such a waiver would be in the national interest, the Petitioner must demonstrate that her proposed endeavor has both substantial merit and national importance, that she is well positioned to advance her proposed endeavor, and on balance waiving the job offer requirement would benefit the United States. *Matter of Dhanasar*, 26 I&N Dec. at 889. After our review of the record, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under prong one of the *Dhanasar* framework and alternatively that she is not well positioned to advance her proposed endeavor under prong two.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. In *Dhanasar*, we further stated that we consider the proposed endeavor's "potential prospective impact," and "look for broader implications" noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Further, "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

Initially, and as noted above, the Petitioner stated that she sought to improve education and training programs in [the] areas of bioanalysis, natural sciences, and biology. In support of her Form I-140, the Petitioner provided, in part, letters of recommendation and articles highlighting critical shortages of medical laboratory professionals in the United States. In response to an RFE, the Petitioner clarified her proposed endeavor and submitted additional evidence including, in part, a business plan, articles related to the medical laboratory field and STEM education, and an expert opinion letter. In her response, she again noted the importance of medical laboratory professionals and the shortage of such professionals and made general claims that her proposed endeavor would address this shortage and impact the U.S. economy. She further noted the importance of STEM education in high school and claimed she would "[popularize] STEM among the younger population." On appeal, with regard to national importance, the Petitioner claims that her endeavor "can potentially have far-reaching positive consequences to bio-science…and push national economic growth." She further claimed that "as her consulting business expands, [she] will create new direct employment opportunities," and that her "consultancy helps local schools and local education and healthcare systems in underserved areas…[by] providing unique training and education programs that can be applied in any [region]."

While we acknowledge the importance of medical laboratory professionals in the United States as well as STEM education in schools in general, our focus is on the specific endeavor that the Petitioner proposes to undertake rather than the importance of the industry or profession in which the individual will work. Here, the Petitioner has not offered sufficient information and evidence to demonstrate the specialized consulting and educational services her company would offer would extend beyond a specific company, school, or other clientele, or that the offered services are at a level that would have national implications in the medical laboratory professional field or STEM areas of education. *See generally 6 USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual (explaining that while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance). Similarly, while the Petitioner generally claims her company could push economic growth and create new employment opportunities to address the shortage in medical laboratory professionals, she does not explain and has not provided evidence showing how this would be accomplished or the scale of any potential economic impact her proposed endeavor may have. Consequently, the record is insufficient to establish her proposed endeavor has *significant* potential to employ U.S. workers or has other *substantial* positive economic effects. Accordingly, we find the Petitioner has not established that her proposed endeavor is nationally important.

Alternatively, even if the Petitioner's proposed endeavor was nationally important, we conclude in our de novo review, that she is also not well positioned to advance the proposed endeavor as required under prong two of the *Dhanasar* framework. To determine whether a petitioner is well positioned to advance their 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The record reflects that the Petitioner obtained a bachelor's degree in bioanalysis in 2001. Her employment experience includes working as a bioanalyst from 2001 until 2016 and as a biochemist for one year through 2017. From November 2017 through August 2021, the Petitioner was a high school science teacher. Since August 2021, the Petitioner has not been employed.

Initially, despite her degree and experience in bioanalysis and teaching at the high school level, the Petitioner has not established she has skills, knowledge, or a record of success associated with starting an education-based consulting service or performing the specific services she claims the consulting company will perform. The record does not reflect the Petitioner has formal education in business, nor does it reflect she previously created and successfully ran a company for any purpose, either in the United States or abroad, to reflect prior knowledge in or a record of success managing and developing a company. Further, the Petitioner claims her company will engage in curriculum development, teacher training, and development for medical laboratory technicians and scientists that adhere to national standards; however the record does not reflect that the Petitioner has formal education related to curriculum development or teacher training, nor experience conducting these activities, in particular at the collegiate or graduate levels or in compliance with any national standards applicable in the

United States.[2] Similarly, the Petitioner claims the company's consulting services would involve assisting medical laboratories with onboarding and program planning, grant writing, and educational policy development, but the record does reflect the Petitioner possesses experience in these areas nor does the Petitioner sufficiently describe her experience in such areas, if any.

The Petitioner also has not submitted sufficient evidence of progress towards achieving her proposed endeavor. The record does not show that the Petitioner has taken steps towards creating a legal entity for her consulting company, nor does she address whether her company would need or has made progress in obtaining accreditation or licenses for any of the education-based services it would provide. Additionally, the Petitioner claims she will use her own funds to create the company, but she has not provided any financial documents showing she possesses the funds she proposes to invest or that she has invested in the development of the company. To the extent the Petitioner states in her business plan that the amount of funds contributed to the creation of the company may fluctuate based on whether there are additional investors or through the use of debt, the Petitioner has not provided corroborating evidence related to the interest of potential investors, or any steps taken to obtain loans or financing that may support the creation and development of the company.

Finally, other than providing general information about the shortage of medical laboratory professionals in the United States, the Petitioner has not provided probative evidence of any interest from potential customers, users, investors, or other relevant entities or individuals who seek her services, especially compared to, for instance, more traditional or more established forms of obtaining education and training for medical laboratory professionals that already exist in the United States. Accordingly, the Petitioner has not established she is well positioned to advance her proposed endeavor.

III. CONCLUSION

The Petitioner has not met the requisite first or second prong of the *Dhanasar* analytical framework, requiring that she demonstrate her proposed endeavor is nationally important and that she is well positioned to advance her proposed endeavor respectively. We therefore conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

As noted above, the Director also concluded that the Petitioner did not establish her proposed endeavor had substantial merit as is required under prong one of *Dhanasar*, or that on balance it would not be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification under prong three. While the Petitioner also contests these conclusions on appeal, since our determinations that the Petitioner's proposed endeavor is not nationally important and that she is not well positioned to advance her proposed endeavor are dispositive of her appeal, we decline to reach and hereby reserve the appellate arguments on these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25

[2] The Petitioner also claims, through counsel, that she has advanced "from basic positions…to advanced supervising positions where she had responsibilities of organizing and planning, training and instructing others." However, neither the Petitioner's curriculum vitae nor her employment letters, expert opinion letter, letters of recommendation, or the Form ETA-9089, Application for Permanent Employment Certification, reflect that she served in such supervisory positions or gained this experience, and her counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

(1976) ("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.