U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32482109

Date: AUG. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 the Petitioner had not established eligibility for 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. 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 establish eligibility for a national interest waiver, petitioners must demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

As an initial matter, the Petitioner contends that the Director erred by initially approving her petition in September 2023, and then issuing a decision denying the petition in January 2024. In support of her contentions, the Petitioner provides printouts of the USCIS case status tracker website, which indicated that the petition was approved in September 2023. A review of USCIS systems indicates that a decision to approve the petition was entered in error on September 8, 2023; however, the action to approve the petition was cancelled on the same day. Although the USCIS case status tracker did not reflect the cancellation of the approval action, as noted by the Petitioner, an approval notice was never generated and mailed to her. Although we do not seek to diminish the stress and confusion this placed upon the Petitioner, we do not conclude that the Director erred by not issuing a Notice of Intent to Revoke, as the petition itself did not receive final approval.

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner intends to be employed as a Finance Director. The Director's decision summarized the Petitioner's statements which indicated that her goal is to "help American organizations efficiently manage their finances and economic resources and achieve their long-term financial goals, thus contributing to the sustainable development and growth of the national economy." The Petitioner further noted that she planned to advance her endeavor by working as a Finance Director at [redacted] which is "a U.S. company based in [redacted] Florida, that offers courier services for customers and facilitates transportation of packages" within the United States and internationally.

As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner established the substantial merit, but not the national importance, of the proposed endeavor. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889.

Although the Petitioner contends that the role of a Finance Director is nationally important and that her "level of skill and expertise . . is of extreme value," the matter here is not whether the general position of Finance Director is nationally important. Rather, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her services as a Finance Director through her employment in the [redacted] Florida area. Likewise, her submission of "Probative Research" covers a wide range of topics, such as the role of finance in business growth, rather than establishing the national importance of her particular professional services.[2]

In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant

[2] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

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.

Moreover, the Petitioner stresses her "skills, experience, and character, as well as highlighting the critical contributions she has made in similar endeavors." However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong. Similarly, the Petitioner also argues the submission of letters discussed the impact of her work in the field. Although the letters discuss the Petitioner's particular services, the letters do not show the broader impact of the Petitioner's work rather than limited to her specific clients, who employ her for her services. Moreover, the letters cover the Petitioner's prior work and accomplishments and relate more to the second prong rather than the first prong of the *Dhanasar* framework. *Id.*

The Petitioner contends that she presented expert opinion letters from A-W-[3] and H-M- who found her proposed endeavor to have national importance. While the letters opine on the potential benefits of the role of a Financial Director, the letters do not explain how they have broader implications for our country. Here, the letters repeat the same arguments addressed above pertaining to the importance of various topics and subjects without showing the wider effect in the field of the Petitioner's particular proposed endeavor.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner did not demonstrate how her employment would largely influence the field and rise to the level of national importance. In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The record does not show through supporting documentation how her endeavor sufficiently extends beyond her prospective clients, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

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. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4]

[3] We use initials to protect the identity of individuals.

[4] *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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.