U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31417915

Date: AUG. 13, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the field of environmental consulting, 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 Nebraska Service Center denied the Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that the Petitioner held an advanced degree or was an individual of exceptional ability and therefore had not demonstrated eligibility for EB-2 immigrant classification. The Director further concluded that the Petitioner was ineligible for and did not merit a national interest waiver as a matter of discretion because she did not establish that she was well positioned to advance her proposed endeavor or 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. 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. ADVANCED DEGREE

The Director initially concluded that the record did not establish that the Petitioner held an advanced degree because she did not provide a certified translation of her master's degree diploma. On appeal, the Petitioner provides a certified translation of her master's degree diploma as well as an official academic record showing that the degree is the foreign equivalent of a U.S. advanced degree. The Petitioner is therefore eligible for underlying EB-2 classification as a member of the professions holding an advanced degree.

III. NATIONAL INTEREST WAIVER

The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework. The Petitioner initially indicated that her proposed endeavor was to work as a biochemist or specialist in environmental biology and chemistry to fill vacancy gaps and positively affect the U.S. economy. In response to a request for evidence the Petitioner submitted, in part, a business plan for a consulting company she claims to own and to have founded in New York. The business plan indicates that through the company she will "work with clients throughout the country, focusing on providing high-quality environmental consulting services, including developing environmental programs and project planning, conducting audits and risk analysis, as well as training clients' staff in environmental practices," and additionally aims to help "companies comply with legal norms and rules in the field of ecology." The Petitioner plans to use her own funds to develop the company.

The Director concluded that the Petitioner's proposed endeavor was of substantial merit and national importance, but, as noted above, that she was not well positioned to advance the endeavor under prong two of the *Dhanasar* framework. On appeal, the Petitioner claims the Director erred in making this conclusion and failed to consider the detailed business plan describing her proposed endeavor; her participation in a lecture in 2004 and inclusion as an author of a scholarly article published in 2011;

[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).

and her language proficiency in multiple languages. After our review of the record, we conclude that the Petitioner has not established that she is well positioned to advance her proposed endeavor.

The first *Dhanasar* prong, regarding substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The second *Dhanasar* prong, however, shifts the focus from the proposed endeavor to the individual. To determine whether a petitioner is well positioned to advance a proposed endeavor under the second prong, 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. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

The record reflects that the Petitioner obtained a bachelor's degree in physical geography in 1997 and a master's degree in environmental biology and chemistry in 2005. Her employment experience includes approximately four years as a translator between 1997 and 2001; four years using computer-aided design for production of housing materials between 2005 and 2009; and two years performing data analysis and creating various tables and graphs between 2010 and 2012. The record reflects that since 2012 the Petitioner has not been employed.

Initially, despite having obtained two degrees related to environmental studies, the Petitioner has not established she has skills, knowledge, or a record of success associated with environmental consulting services, developing environmental programs and project planning, conducting audits and risk analysis, training staff in environmental practices, or compliance with U.S. environmental rules and regulations, which she proposes her 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. Furthermore, the Petitioner's descriptions of her experience in translating, construction, and data analysis do not specifically relate to environmental services, nor, in particular, U.S. environmental rules and regulations. The Petitioner has not sufficiently explained how she acquired, if at all, experience specifically related to her proposed endeavor through these previous positions. Letters of recommendation submitted on behalf of the Petitioner similarly do not specifically address how her education and experience relate to her proposed endeavor in the United States. The Petitioner has also been unemployed since 2012 and she has not adequately explained how her education and any previous experience has remained relevant to her proposed endeavor since that time.

Additionally, although the Petitioner provided a business plan for her proposed endeavor, she has not submitted evidence of progress towards achieving that endeavor. The record does not show that the Petitioner has taken steps towards creating a legal entity for the consulting company she claims to have founded and own. And while the Petitioner claims she will use her own funds to financially support the company, she has not provided any financial documents showing she possesses the funds she proposes to invest or that she has made any investments towards the creation or development of the company. Finally, the Petitioner has not provided sufficient evidence demonstrating the interest of potential customers, users, investors, or other relevant entities or individuals in developing her company or for the services her company would offer.

Thus, despite her education, fluency in multiple languages, and having a business plan for her proposed endeavor, without sufficient evidence of related skills, knowledge, or a record of success towards achieving the proposed endeavor, or evidence demonstrating the means of financial support to undertake the endeavor or any progress towards achieving the proposed endeavor, the record does not support that she is well positioned to advance her proposed endeavor.

IV. CONCLUSION

The Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, requiring that she demonstrate she is well positioned to advance her proposed endeavor. 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 satisfy the third prong of the *Dhanasar* framework as she did not show 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. While the Petitioner contests this conclusion on appeal, because our determination that the Petitioner is not well positioned to advance her proposed endeavor is dispositive of her appeal, we decline to reach and hereby reserve the appellate arguments on this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (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.