U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32366925

Date: AUG. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur with a background in nursing, 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 the Petitioner was eligible for a national interest waiver of the job offer requirement. 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.

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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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.

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 second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the 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. *Id*. at 890.

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id*. at 890-91.

II. ANALYSIS

The Petitioner is an entrepreneur who has worked as a medical device and product sales representative. She holds a bachelor's degree in nursing and has worked in the medical field and the financial sector.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that while the record established that the proposed endeavor had substantial merit, the national importance of the endeavor had not been demonstrated under prong one. The Director also determined that the Petitioner was not well positioned to carry out the endeavor under prong two, and that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that Her Endeavor Has National Importance

On appeal, the Petitioner argues that her endeavor will have the required impact, as she has demonstrated success in similar efforts and her endeavor could impact the field of medical sales and marketing. She contends that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations" as well as erroneously applying the law. She argues that she demonstrated the national importance of her proposed endeavor by a preponderance of the evidence and that the Director did not adequately consider her resume, business plan, letters of recommendation, and evidence of her contributions to her field. She asserts that the benefits of her endeavor will be "concrete and substantial" and that she will additionally address a labor shortage. She highlights the potential for job creation and economic impact that her marketing consulting firm can engender, noting that "economies are fueled by their country's respective trade sectors, and nearly all industries require steep marketing strategies, which, in turn, directly benefits the nation's economy and overall production levels." She points to her past impact on medical sales and the marketing management industry and highlights the importance of entrepreneurial endeavors to the overall economy.

In support of the endeavor's national importance, the Petitioner has submitted evidence including, but not limited to: a business plan and resume; her academic credentials, certificates, and training; evidence of her prior work experience; expert evaluations of her educational credentials; expert evaluations of her proposal's eligibility for a national interest waiver; letters of support; letters of intent to retain her services; and industry articles detailing the impact of entrepreneurs, including female and immigrant entrepreneurs, on the national economy.

As an initial matter, the record does not demonstrate that the Director decided the case using an incorrect standard of review or imposed a heightened evidentiary standard. Although the Petitioner asserts that impermissible extra requirements were imposed, the Petitioner does not indicate what these additional evidentiary requirements were. The Petitioner also does not indicate why the decision reflects an adjudication by a standard different from the preponderance of the evidence. Rather, the Petitioner generally asserts that the submitted evidence was sufficient under this standard and that the Director should have granted the Petition. While the Petitioner may disagree with the Director's decision, this does not inherently show that the Director inherently misapplied the standard of review, and we do not see such a misapplication reflected in the decision.

With respect to the request for a national interest waiver, the Petitioner has not established that her proposed endeavor has a prospective potential impact rising to the level of national importance. The Petitioner's endeavor is to act as an entrepreneur in the medical sales and marketing field; she intends to offer consulting services, training, and sales commissioning services. The Petitioner highlights the importance of marketing to business growth. She stresses that small- and medium-sized medical device manufacturers often face barriers when attempting to export their products and highlights her ability to assist in expansion to Brazil.

Throughout the record, the Petitioner points to her background, education, and experience in her field. The Petitioner's knowledge, skills, and experience in the field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor has national importance under *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor

satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work.

The Director determined, and we agree, that the proposed endeavor lacked the broader implications outlined in *Dhanasar*. *Id.* at 889. In particular, the Director highlighted that the proposed endeavor did not stand to sufficiently extend beyond the Petitioner's prospective clients, associates and partners such that it would have a national impact. While the individuals who would receive these services might find them valuable and beneficial, the Petitioner has not demonstrated how these impacts are nationally important. The Petitioner highlights the general impacts of entrepreneurship and marketing on small business performance; however, she has not demonstrated that her work has implications within her field as contemplated in *Dhanasar*. In *Dhanasar*, we highlighted possible national implications including improved manufacturing processes or medical advances. *Id.* These or similar factors are not present in the Petitioner's proposed endeavor.

Similarly, the evidence shows the Petitioner's experience standardizing and introducing medical products in Brazil, but she has not shown that her endeavor stands to improve human knowledge, further research outcomes, or contribute to scientific advancements in the United States or globally. *Id.* Finally, the Petitioner has not argued that her proposed endeavor would have "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area." *Id.* The Petitioner's economic arguments, namely that her work will reduce healthcare costs and increase productivity, are not accompanied by evidence of the particularized economic impact that her endeavor would produce.

We are also unable to conclude that the other types of factors outlined in *Dhanasar* have been met in this case. Beyond generally asserting the economic benefits of marketing and entrepreneurship on the macroeconomic scale and asserting that her endeavor would have undefined "ripple effects" upon the economy, the Petitioner has not argued that her proposed endeavor would have "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area." *Id.*

Because the documentation in the record does not establish the national importance of the proposed endeavor, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. *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 alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because she has not met the first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.