U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31288231

Date: AUG. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial specialist, 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 establishes that the Petitioner qualifies as a member of the professions holding an advanced degree, but does not establish that the Petitioner is eligible for 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.

Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

A. EB-2 Classification

The Petitioner is commercial specialist. She submitted a foreign diploma and transcripts accompanied by an academic evaluation which states that her degree is equivalent to a U.S. bachelor's degree in business administration. In addition, the record contains letters evidencing at least five years of progressive experience in the specialty. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree and we agree.

B. National Interest Waiver

1. Substantial Merit

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. *Id.* The Petitioner states her proposed endeavor is to be a commercial specialist, assisting companies by creating marketing plans, strategic planning, and organizing promotional events. She will work in the areas of sales, and financial and project management to enhance a company's profitability and increase their customer portfolio. We conclude that the proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Director determined that the Petitioner did not establish her proposed endeavor has national importance because the record did not establish that her proposed endeavor would have a broader impact on the field. In addition, the Director states that the Petitioner did not provide additional evidence in response to the request for evidence (RFE). The Petitioner states on appeal that supporting documentation was submitted that established the proposed endeavor would yield substantial positive effects on the economy, broadly enhance societal welfare, and impacts a matter that a government entity has described as having national importance.

[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).

In response to the RFE, the Petitioner did submit additional evidence, however, the evidence provided was in the form of links to articles, not the printed articles themselves. While we are able to access the articles, we cannot confirm if these are the same articles that the Petitioner referenced since the printed articles were not provided. It is ultimately the petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Skirball Cultural Center*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Ho*, 19 I&N Dec. 582, 588-89 (BIA 1988); *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966); *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019). Here, the Petitioner did not provide printed copies of the articles, and therefore, the record only contains very general, broad descriptions of why these articles establish how the Petitioner's proposed endeavor will have positive effects on the economy, will broadly enhance societal welfare, and impacts a matter that a government entity has described as having national importance.

However, even if we assume that these articles are the same articles that the Petitioner referenced, the articles do not establish the proposed endeavor's national importance because in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* 26 I&N Dec. at 889. While the industry reports and articles in the record show the U.S. government's interest in industries related to the proposed endeavor and while we recognize the value and importance of the industry, working in the field is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of her proposed endeavor. Although it appears the Petitioner's proposed endeavor does relate to these government initiatives, the record focuses on the broader industry importance and impact, instead of the prospective impact of the Petitioner's specific proposed endeavor.

Dhanasar states, "an undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* The record does not establish that the proposed endeavor will have "national or even global implications within a particular field." The Petitioner contends her proposed endeavor will impact more than just her employers as the work she does impacts not only the companies that she serves, but also the communities in which they are located; impacting the regional and national economy. The Petitioner states that her proposed endeavor will have a broader impact and uses examples from her employment history as evidence of the future impact of her proposed endeavor. The RFE response states, "[i]t is known that the best. . . way to estimate the prospective impact of one's work is by evaluating the individual's past achievements." For example, the Petitioner highlights her work for one company where she designed and implemented an automated system for receipts and payments; the result of which was "significant improvements and outcomes" for the company, including, "enhanced automation, increased credibility, and a higher level of trust in their payment processes, fostering stronger relationships with suppliers." While we acknowledge her experience and the positive outcomes resulting from her work; the positive impact is for her direct employer and does not establish the broader impact that the *Dhanasar* framework requires. Therefore, the record does not establish the broader implications of the Petitioner's proposed endeavor and the impact of the proposed endeavor does not rise to the level of national importance.

The record also contains a letter from a company who intends to hire the Petitioner as an operations manager. The purpose of the letter is to establish that there is a demand for her services and an interest in her work, and while this may be true, this does not establish the broader impact of her proposed endeavor. In fact, working for this company as an operations manager further establishes that her impact will be to one employer as her stated experience entails and her proposed endeavor will not have broader implications within the field.

Lastly, the Petitioner states that her proposed endeavor will have a broader industry impact as she will offer seminars, lectures, courses, and classes to share her knowledge and publicize her services. However, in *Dhanasar*, we determined that the Petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Dhanasar*, 26 I&N Dec. at 893. Similarly, the Petitioner's teaching activities also do not rise to the level of having national importance as they do not impact her field more broadly.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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 met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.