U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34162895

Date: AUG. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a clinical and counseling psychologist, 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 Petitioner did not establish that 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 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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

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

Id.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. 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.

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. *Dhanasar*, 26 I&N Dec. 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.

According to the Petitioner's cover letter, she intends to continue using her expertise and knowledge as a clinical and counseling psychologist, contribute to the U.S. economy, and develop a business of early childhood education centers based in Florida. The Petitioner indicates that her business "is poised to revolutionize early childhood education in the United States" and will adopt "the unique Early Talent Development and Improvement System," addressing a "critical need for comprehensive and innovative educational approaches." In addition, "the presence of a full-time child psychologist underscores the commitment to children's mental well-being." The Petitioner also submitted a business plan, an expert opinion letter, recommendation letters, and industry articles and reports in support of her eligibility.

The Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance or that the Petitioner is well positioned to advance the proposed

endeavor and issued a request for evidence (RFE). The Director specified that according to the U.S. Department of Labor, in most states practicing psychology or using the title "psychologist" requires licensure, and in all states and the District of Columbia, psychologists who practice independently must be licensed where they work. The Director notified the Petitioner that the record did not establish she is licensed as a psychologist in the United States or that she has met the educational requirements to pursue her proposed endeavor. In her RFE response, the Petitioner did not submit documentation to remedy this deficiency.

The Director denied the petition, concluding that though the proposed endeavor had substantial merit and national importance, the record contained insufficient evidence to demonstrate the Petitioner is well positioned to advance the proposed endeavor under *Dhanasar*'s second prong. The Director noted that the Petitioner did not provide evidence with the initial petition or the RFE response demonstrating she met the educational and licensing requirements to work as a clinical psychologist and counselor in the state of Florida, the intended location of her business. On appeal, the Petitioner claims that the Director erred by requiring a stricter standard of proof than preponderance of evidence, imposing novel substantive and evidentiary requirements, and failing to consider the submitted documentation. The Petitioner reiterates her educational accomplishments and professional experience and contends she is well positioned to advance her proposed endeavor due to her education, skills, and knowledge within the fields of psychology and counseling.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director thoroughly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether she had demonstrated, by a preponderance of the evidence, that she meets the second prong of the *Dhanasar* framework.

Upon review, the record supports the Director's determination that the Petitioner did not demonstrate, by a preponderance of the evidence, that she meets the second prong of the *Dhanasar* framework. We note the Petitioner states on appeal that in the United States, she "has continued to expand her expertise by obtaining relevant certifications and adapting to new challenges, such as providing online psychological counseling during the COVID-19 pandemic." However, she does not address the Director's concerns regarding the lack of evidence demonstrating she obtained the appropriate licensing and completed the educational requirements to work as a clinical psychologist and counselor in Florida.

In its totality, the record does not demonstrate that the Petitioner is well positioned to advance her proposed endeavor to work as a clinical psychologist and counselor. Because the Petitioner has not established that she is well positioned to advance her endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver. We decline to reach and hereby reserve arguments concerning her eligibility under the remaining prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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.