U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34837395

Date: DEC. 03, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a foreign trade specialist, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established 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. 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. 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 Third, Ninth, Eleventh, and D.C. Circuit Courts 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.

II. ANALYSIS

The Director determined that the Petitioner does not merit a discretionary waiver of the job offer requirement "in the national interest." While the Director found the Petitioner had established the substantial merit of her proposed endeavor under *Dhanasar's* first prong and that she was well-positioned to advance her proposed endeavor under *Dhanasar's* second prong, the Petitioner had not established the national importance of her proposed endeavor under *Dhanasar's* first prong and was therefore ineligible for a national interest waiver. The Director further determined that analyzing the issue of whether the Petitioner had established, on balance, that waiving the job offer requirement would benefit the United States under *Dhanasar's* third prong would serve no purpose.

We note that in the initial filing, the Petitioner argued she qualifies for the underlying EB-2 visa classification both as an advanced degree professional and also as an individual of exceptional ability. However, the Director's decision did not analyze whether the Petitioner meets the underlying EB-2 visa classification. On appeal, the Petitioner asserts that the Director acknowledged she was an advanced degree professional. However, the record does not support the Petitioner's assertions that the Director determined whether she was an advanced degree professional or an individual of exceptional ability and had thereby established her eligibility for the underlying EB-2 visa classification.

Because we conclude the Petitioner has not established the national importance of her proposed endeavor under *Dhanasar's* first prong, which is dispositive of this appeal, we reserve the issues of whether the Petitioner has established her eligibility for the underlying EB-2 visa classification as an advanced degree professional or as an individual of exceptional ability, and whether she has demonstrated the second and third Dhanasar prongs. 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 an applicant is otherwise ineligible).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The Petitioner, a foreign trade specialist, intends to perform her services in commercial strategic planning and international negotiations and partnerships in the purchasing sector of the field of aeronautics. According to her professional plan, her endeavor will impact the United States by enhancing profitability, production, and agility of U.S. companies and will enable business growth by improving the qualifications of the U.S. workforce to enable business growth by providing guidance and training to American workers in areas such as cross-cultural communication, negotiation, and strategic planning. In response to the Director's Request for

Evidence (RFE),[2] the Petitioner submitted a supplement to her proposed plan, adding, in relevant part, her intention of pursuing volunteer projects that will impact communities in the United States by providing strategic planning for Non-Government Organizations (NGO)s. She also explains that her endeavor will involve implementing an "aerochain optimization initiative" which will focus on mitigating material shortages, optimizing inventory, and improving production schedules to support the financial goals of U.S. based aeronautical companies. As noted above, the Director determined the Petitioner's proposed endeavor has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we noted that, in assessing national importance, "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 at 890. We also stated that "[a]n endeavor that has significant 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.

The Director determined that the Petitioner will be limited to serving the clientele of the company she will be potentially working for and that the evidence in the record did not demonstrate how her proposed endeavor will extend beyond the organization and its clients to impact the industry or field more broadly. The Director further determined that the Petitioner had not demonstrated the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation as contemplated by Dhanasar. We agree.

On appeal, the Petitioner asserts that the Director erred by not considering her evidence in support of the national importance of her proposed endeavor and she specifically identified a support letter and three articles. She argues this documentation establishes that her work has a direct and positive influence on the U.S. economy. She explains that the letter corroborates the impact of her work in supply chain processes, and demonstrates that her efforts will contribute to a more efficient and resilient production base, which supports economic stability and growth. However, the Petitioner's documentation does not support her assertions that her proposed endeavor would lead to economic stability or growth or demonstrate that her proposed endeavor would result in national or global implications for the field or provide substantial economic benefits regionally or at a level of national importance. Although the letter discusses her work as it relates to supply chain efficiency, it does not demonstrate the broader impact of her work but rather limits the analysis to her achievements aiding a specific client of her former employer. One of the articles highlighted by the Petitioner described this former employer, a global aerospace company. Based on the article, the Petitioner claims her contributions to her employer demonstrate her capability to impact global supply chain dynamics positively. However, neither the letter nor the article speaks to how the Petitioner's contributions to her employer resulted in or would result in national or even global implications within the field. Moreover, the support letter described the Petitioner's skills and experience and relate to the second

[2] On appeal the Petitioner asserts that the Director erred by stating in the decision that a notice of intent to deny was issued in her case when it was an RFE that the Director issued. While the Petitioner is correct that the Director issued an RFE in her case, we do not conclude that this misstatement affected the analysis of the Director's decision. Further, as relief for this error, the Petitioner seeks review of the decision, which is what our de novo review of the record provides the Petitioner.

prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The other two articles highlighted by the Petitioner describe the importance of transportation and supply chain management, specifically in aerospace and defense sectors. However, 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." Id. at 889. Consequently, the Petitioner's evidence does not show how her services would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects regionally or nationally as contemplated by Dhanasar. Id. at 890.

The Petitioner also asserts on appeal that her proposed endeavor embodies a commitment to societal welfare as it includes strategic voluntary projects such as providing strategic planning for NGOs. However, as discussed above, it is not the importance of the area the Petitioner will work that demonstrates the national importance of her proposed endeavor. Rather, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her services as a foreign trade specialist in commercial strategic planning and international negotiations and partnerships in the purchasing sector of the field of aeronautics. For example, the Petitioner's proposed endeavor includes enhancing profitability, production, and agility of U.S. companies by improving the qualifications of the U.S. workforce by providing guidance and training to U.S. workers in areas such as cross-cultural communication, negotiation, and strategic planning. However, the Petitioner does not explain how her proposed endeavor would offer benefits extending beyond her trainees to impact the field of aeronautics more broadly. Furthermore, we add that the Dhanasar decision contemplates that "[a]n 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. at 893. However, the Petitioner has not established the extent to which her proposed endeavor's methods and teachings in, for example, cross-cultural communication, negotiation, and strategic planning differ from or improves upon those already available and in use in the United States such that her proposed endeavor would have national or global implications within her field or for the United States.

For these reasons, the Petitioner has not demonstrated that, beyond the limited benefits provided to her prospective employers, the Petitioner's proposed endeavor has broader implications in the field of aeronautics or that it has the significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area for instance, rising to the level of national importance.

Accordingly, the Petitioner has not demonstrated the national importance of the proposed endeavor under the first Dhanasar prong, and therefore has not established that she merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

ORDER: The appeal is dismissed.