U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33940539

Date: DEC. 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a foreign language and literature teacher and entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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, determining the Petitioner did not establish eligibility for a national interest waiver under the three-prong analytical framework, though the Director did find that the endeavor had substantial merit.[1] See Matter of Dhanasar, 26 I&N Dec. 884, 889-90 (AAO 2016). 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.

The Petitioner intends to establish is a specialized educational center that offers second language learning services and educational support for children with learning difficulties. The mission of the endeavor is to increase proficiency in reading, writing, and speaking by helping children with attention deficit disorders and other behavioral problems improve their academic performance. The institute would serve both children and parents, promoting stimulation methods and extracurricular activities that have proven effective for this specific audience. On appeal, as it specifically relates to the first prong of the Dhanasar analytical framework, the Petitioner claims her business will generate 94 jobs and anticipates contributing $2,960,713 in taxes during the first five years. Further, the Petitioner submits research supporting the economic benefits of bilingualism, the power of bilingual education, research showing that high school students with disabilities achieve better outcomes in inclusive academic settings and an updated employment multiplier of 1.93 demonstrating that her anticipated creation of 94 jobs in the first five years will be amplified to 181 jobs by the multiplier effect of indirect

[1] On appeal, the Petitioner erroneously asserts that the Director erred in finding that her proposed endeavor does not have substantial merit.

jobs such as suppliers of educational materials, support services such as transportation and food, and even healthcare services for employees and their families.[2]

We adopt and affirm the Director's decision. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director reviewed and analyzed the Petitioner's national importance claims under the first prong of Dhanasar, including her business plan and employment creation assertions.

As it relates to the Petitioner's experience and ability claims, those relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. Moreover, the Petitioner must establish the national importance of her business rather than the importance of education, the language instruction industry, small businesses, entrepreneurism, and immigration.[3] 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. Further, "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. Also, "[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. at 890.

Upon review of the record, we agree with the Director that the Petitioner has not established her proposed endeavor sufficiently extends beyond the company and its clientele to impact the industry or the field more broadly, at a level commensurate with national importance. In Dhanasar, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. Moreover, the Petitioner did not demonstrate how her claimed employment and revenue projections, even if credible, show significant potential to employ U.S. workers or otherwise reflect substantial positive economic effects for our nation. Id. at 890.

Because the Petitioner did not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver, as a matter of discretion.[4] Further analysis of her eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.[5]

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[2] While we may not discuss every document submitted, we have reviewed and considered each one.

[3] The Petitioner's contentions and submissions of industry articles and reports relates to the substantial merit of the proposed endeavor rather than the national importance.

[4] 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).

[5] See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings"

ORDER: The appeal is dismissed.

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 alternate issues on appeal where an applicant is otherwise ineligible).