U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34871941

Date: DEC. 05, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accounting specialist and entrepreneur, 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 is eligible for a waiver of the job offer requirement 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree and she is well positioned to advance the proposed endeavor.[2] The remaining issue to be determined 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 of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance. We agree with the Director that the submitted documentation establishes the Petitioner's proposed endeavor has substantial merit. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner's business plan provides "[t]he endeavor proposed by [the Petitioner] relies on developing [redacted] an [sic] finance and accounting consulting services firm that provides bookkeeping and accounting services, tax preparation services, payroll services, accounts payable agreement assignments, tax planning and consulting, audit review and annual reports services and financial statement preparation services planned to be headquartered in Florida with two business unit in Georgia and California."

In addition to the business plan, the Petitioner previously submitted industry articles and reports on accountants, letters of intent, an investor letter, company records, financial records, recommendation letters, education records, and a resume.

The Director listed the evidence submitted by the Petitioner and reviewed the record in finding that the Petitioner did not establish that the proposed endeavor has national importance. The Director emphasized that the relevant question discussed in *Dhanasar* is not the importance of the field, industry, or profession, rather it is the importance of the proposed endeavor. *Id.* , at 889. The Director referenced analysis of the Petitioner's business plan from a request for evidence (RFE), including her qualifications, company location, industry data, employment projections, and profit projections. Specifically, the Director found that the Petitioner did not demonstrate how hiring 44 employees would equate to the potential to significantly hire U.S. workers and the record did not show how the benefits to the national economy from the proposed endeavor would reach the level of substantial positive economic effects. Next, the Director reviewed the Petitioner's response to the RFE, in which she discussed the same figures listed in the RFE, and found that she did not demonstrate that the proposed

[2] We will not address whether the Director correctly made these findings, as the determination that the proposed endeavor lacks national importance is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

endeavor would have substantial positive economic effects or the potential to significantly hire U.S. workers. The Director addressed government data and determined that the proposed endeavor would not impact any government initiatives. The Director also discussed an investor letter, letters of intent, and letters of recommendation, and their respective evidentiary deficiencies in relation to a finding of national importance. The Director determined that the Petitioner did not establish the proposed endeavor would have broader implications in her field, or that the proposed endeavor has implications beyond her company, business partners, alliances, or unidentified clients at a level demonstrating national importance.

The Director concluded the decision by finding that the Petitioner did not provide sufficient evidence of the prospective endeavor's potential prospective impact, including broader implications, or national or global implications within the field; significant potential to employ U.S. workers; substantial economic effects, particularly in an economically depressed field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, the Director concluded that the Petitioner did not establish the proposed endeavor is of national importance.

We adopt and affirm the Director's decision as it relates to prong one of the *Dhanasar* analysis regarding national importance. *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 the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director reviewed evidence submitted by the Petitioner, discussed the evidentiary deficiencies in detail, and correctly analyzed the Petitioner's national importance claim. On appeal, the Petitioner has not overcome the findings made by the Director.

First, the Petitioner argues that the Director erroneously imposed a stricter standard of proof. 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. *See 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, USCIS considers 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 Petitioner does not specifically identify statements in the Director's decision applying a higher standard of proof or imposing novel substantive and evidentiary requirements beyond those set forth in the *Dhanasar* framework.

Second, the Petitioner asserts that that the Director did not give due regard to her resume, business plan, work experience, letters of recommendations, and industry articles and reports. The Petitioner discusses her academic and professional experience; mentions projected economic figures and the generation of 44 jobs; and refers to industry articles and reports about the economic importance of immigrant entrepreneurs.

As discussed above, the Director listed the evidence submitted by the Petitioner; referenced the content of the business plan, investor letter, letters of intent, and letters of recommendation; and discussed their deficiencies in detail. The Petitioner has not rebutted any of these findings. We note the

Petitioner's academic and professional experience. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong. Finally, regarding industry articles and reports, the relevant question discussed in *Dhanasar* is not the importance of the field, industry, or profession, rather it is the importance of the proposed endeavor. *Id.* at 889.

The Petitioner has not established that she meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, she has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the third prong outlined in *Dhanasar*. *See Bagamasbad*, 429 U.S. at 25; *see also L-A-C-*, 26 I&N Dec. at 526 n.7.

ORDER: The appeal is dismissed.