U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35104858

Date: DEC. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial engineer, 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 petition, concluding that although the Petitioner qualified for the EB-2 classification as an individual of exceptional ability, she 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 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

We set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national

[1] *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Petitioner proposes to work as an industrial designer. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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. 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.

The Director concluded that the Petitioner's proposed endeavor has substantial merit. The Director determined, however, that the Petitioner did not establish the proposed endeavor's national importance, that she is well positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director "erred in applying the law to the facts of the case." The Petitioner further contends that the Director failed to acknowledge the sufficient evidence she provided to demonstrate her proposed endeavor's national importance.

The Petitioner states that she seeks to create environmentally sustainable products and architectural finishes that comply with green product regulations. She explains that she aims to increase the

percentage of Leadership in Energy and Environmental Design (LEED) certified projects, reduce environmental impact, and lower the carbon footprint within the United States. She also indicates that she plans to conduct research on existing green regulations and industry best practices, select eco-friendly materials, and develop energy-efficient designs for innovative construction finishing products. The record includes a business plan, expert opinion letter, recommendation letters, and industry reports and articles. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The Petitioner argues that her proposed endeavor is of national importance due to her focus on designing environmentally sustainable products for the construction and design industry. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. 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." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "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.* 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.* at 890. Here, the Petitioner contends that her consultancy services aimed at advising construction firms, architects, and builders on using sustainable materials, will increase demand for green building products and will simulate growth in the manufacturing sector. The Petitioner nonetheless has not demonstrated that her proposed endeavor offers broader implications in the manufacturing, design, and construction field or substantial positive economic effects for the country that rise to the level of national importance.

The Petitioner contends that her commitment to developing sustainable construction finishing products holds significant implications for the global competitiveness of the U.S. design and construction industry. She highlights a product she developed, [redacted] while working for a company and explains that the product is a [redacted] sheet that can be quickly installed on various surfaces. The Petitioner states that her plans to develop and implement construction finishing products like [redacted] which comply with green product regulations and LEED certification standards, will promote the adoption of sustainable practices. She emphasizes that this will positively impact broader society and address environmental, social, and health challenges on a national scale. While we acknowledge the substantial merit of developing environmentally sustainable products, the record lacks sufficient evidence that the Petitioner's existing or future products have been or will be adopted by the industry, made an impact in the field, or had far-reaching implications. Although we recognize that her proposed endeavor would positively affect her clients and the companies she collaborates with, the Petitioner has not convincingly explained, nor does her record sufficiently demonstrate, that her work would have broader implications for the industry or the U.S. economy that would rise to the level of national importance.

The Petitioner maintains that her endeavor has significant potential to employ U.S. workers and generate substantial economic effects, aligning with the increasing demand for sustainability skills and green jobs in the United States. She also declares that the adoption of her sustainable finishing products will help U.S. construction companies expand their revenues and project portfolios. The Petitioner, however, does not provide sufficient detail of the basis of her projections or adequately explain how these revenue

forecasts will be realized. As previously mentioned, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not demonstrated that her undertaking has implications beyond the companies and clients she elects to work with to impact the U.S. economy on a broad scale rising to the level of national importance. 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. *Id.* at 893. Similarly, the record here does not establish that the Petitioner's proposed endeavor's impact will be nationally important.

The Petitioner underscores the expert opinion letter, which describes her proposed endeavor as having "national and global implications." She also continues to highlight the national and global significance of her intention to develop environmentally sustainable construction finishing products that adhere to LEED standards. However, the record does not include adequate corroborating evidence to demonstrate that the Petitioner's specific proposed endeavor will have broader implications in the field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does 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. 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 second and third prongs outlined in *Dhanasar*. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.