U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34851022

Date: DEC. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a facilities manager, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but 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.

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;

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

The Petitioner proposed to elevate her "career within Facilities and Project Management" by either "serving within American organizations or as an independent consultant." The Petitioner stated her work "will have profound implications in enhancing safety protocols and refining internal operations procedures" as well as "promote the physical and mental well-being of the workforce, fostering an environment of inclusivity and accessibility for individuals with disabilities." The Petitioner also stated her "initiative will create new job positions and enhance tax revenue."

The Director determined the Petitioner's proposed endeavor was of substantial merit, and we agree. However, the Director concluded the Petitioner did not establish that her proposed endeavor had national importance.

On appeal, the Petitioner contends the Director "erred in applying a stricter standard of proof than the "preponderance of the evidence"" when analyzing the evidence by "not properly considering key documents on the record." Specifically, the Petitioner notes she provided professional plans, personal statements, letters of recommendation, and an expert opinion letter in support of national importance. However, the Petitioner contends that "USCIS either partially overlooked the evidence on record and/or went beyond the proper standard of review – The Preponderance of the Evidence." The Petitioner further states that "failure to discuss all elements of the evidence submitted with the initial petition and [request for evidence (RFE)] response served to the direct disadvantage of" the Petitioner.

The Petitioner cites to *Buletini v. INS*, 860 F. Supp. 1222, 1233 (E.D. Mich. 1994) to support his assertion that he was disadvantage because the Director did not discuss all the evidence present in the record. But the *Buletini* court opinion referred to the Director's failure to consider *forms* of evidence that the petitioner in that case submitted such as the book and the medical dictionary he authored, and his study that appeared in the largest circulation newspaper in that petitioner's home nation. *Buletini*, 860 F. Supp. at 1232–33. The *Buletini* court did not indicate that the director was required to discuss each and every piece of evidence within the record.

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner provided a professional plan and a personal statement with the initial petition, as well as an amended professional plan and statement in response to the Director's RFE. On appeal, the Petitioner provides a second amended professional plan and statement. Upon de novo review, we note that the various editions of the Petitioner's professional plans and statements submitted into the record primarily highlight her academic credentials and years of professional work experience in facilities and project management. But the Petitioner's academic credentials and professional experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor

to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of her proposed work.

The Petitioner asserts that "[h]er initiatives will make significant contributions to the U.S. economy through improved corporate practices, enhanced sustainability, better employee well-being, and increased real estate values" and that "[h]er commitment to community involvement and local job creation further highlights the broad impact of her proposed work, aligning her professional goals with broader national objectives of economic growth, environmental sustainability, and social development." The Petitioner also asserts in her amended professional plan and statement that she will provide her services to over eight thousand employees in the next five years and, thus, "further contributing to businesses and the U.S. economy." It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Whilst any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the asserted potential prospective impact of her proposed endeavor stands to have national, or even global, impact to her field or offer broader implications, or generate substantial positive economic effects. The Petitioner has not sufficiently described their proposed endeavor beyond the sphere of individuals or entities seeking out their services. This is akin to teaching which we determined in *Dhanasar* did not rise to a level of having national importance. *Id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her future customers and employer(s) to impact her field of facilities and project management, the economy, or U.S. societal welfare more broadly at a level commensurate with national importance. So, the Petitioner has not provided evidence demonstrating that her proposed endeavor would operate on such a scale as to rise to a level of national importance.

The Petitioner provided an expert opinion letter from an associate professor of marketing at [redacted] The associate professor opines that the Petitioner's proposed endeavor is nationally important due to the facilities management and construction project management industries' significance to the U.S. economy and the demand for facilities and construction managers in the country. The associate professor, however, does not address the Petitioner's professional plans, the specific proposed endeavor described therein, its prospective substantial economic impact, or any broader implications of the Petitioner's intended facilities management services. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

The authors of the letters of recommendation the Petitioner submitted praise her abilities in the facilities management industry and her personal attributes, indicating that she would be an asserted asset to the workplace. However, the letters of recommendation do not offer persuasive detail concerning the impact of her proposed endeavor and how it would extend beyond her employer(s) and clients. As such, the letters are not material, relevant, or probative to an evaluation of the Petitioner's eligibility under the first prong of *Dhanasar*.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs, and we hereby reserve them. *See INS v. Bagamasbad,* 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. The burden of proof is on the Petitioner to establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.