U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34759020

Date: DEC. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing 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 that the Petitioner did not establish that her proposed endeavor is of national importance. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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,[2] grant a national interest waiver if the petitioner demonstrates that:

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree, a determination the record supports. Accordingly, the remaining issue to be determined on appeal 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. Based on our de novo review of the record, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong. Specifically, the Petitioner has submitted insufficient evidence regarding the substantive nature of her proposed endeavor such that she can establish that it meets the requirements of the first *Dhanasar* prong.

The Petitioner filed the Form I-140, Immigrant Petition for Alien Workers (I-140), in December 2018. She indicated that her occupation was marketing manager and that she planned, directed, or coordinated policies and programs such as determining the demand for products and services. In a professional plan and statement initially submitted with the petition, the Petitioner asserted that she planned to continue working with American institutions that required her knowledge and expertise. She stated that she intended to continue designing marketing strategies, maintaining relationships to facilitate company growth, and identifying business development opportunities in order to help U.S. business improve their strategies and practices. She referred to her 14 years of professional experience as well as her academic qualifications. In a response to a request for evidence (RFE) from the Director, the Petitioner submitted an additional professional plan and statement in May 2021. She reiterated that her proposed endeavor was to continue working as a marketing manager to provide strategic guidance and direction in marketing, advertising, business management, and marketing analysis. The Petitioner contended that her endeavor would help U.S. companies seize new market and investment opportunities because marketing was the most critical indicator of its business capability. She elaborated that she could assist companies adapt to a larger virtual model in light of the COVID-19 pandemic. Her statement referred to her company operating on both a local and global level. The record also includes the Petitioner's resume, academic diplomas, letters from employers, professional certificates, and industry reports and articles.

[2] *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).

In denying the petition, the Director determined that although the Petitioner's proposed endeavor had substantial merit, and that she well-positioned to advance it, she had not established that the reach of her proposed endeavor extended beyond the single, individual company that employed her. The Director additionally noted that the Petitioner's endeavor appeared to consist of continuing to work at her current employer as a marketing and program manager, a position she began after she filed the initial petition. The Director found that the Petitioner had made other changes to her professional plans that represented material changes from her initial filing, including plans to help U.S. companies adapt to changes stemming from the COVID-19 pandemic. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) ("New facts after the filing date cannot establish eligibility as of the priority date"); *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) (noting a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements). Finally, the Director also concluded that the Petitioner had not established 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.

On appeal, the Petitioner argues that she has established eligibility for the national interest waiver under all three prongs of the *Dhanasar* framework. In support of her argument that she has submitted sufficient evidence of her proposed endeavor's national importance, she contends that the Director did not give due regard to her submitted resume, professional plan, evidence of work in the field, letters of recommendation, and industry reports and articles "demonstrating the national importance of the [Petitioner's] proposed endeavor." The Petitioner further argues that she will be addressing an industry shortage of marketing and business professionals in the United States. She asserts that she has shown clear projections in her field-related projects of the benefits to the national economy, the domestic job market, other U.S. organizations, and U.S. citizens at large. Additionally, the Petitioner claims that her work with her current employer in [redacted] with the African-American community addresses racial disparities in in unemployment.

The Applicant also argues generally that the Director did not apply proper standard of proof and instead erroneously imposed a stricter standard. However, she did not elaborate this argument or specify what improper standard the Director applied in her case.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. Simply being employed in an occupation does not constitute an endeavor for the purposes of these proceedings. *Id.*

Here, the nature of the Petitioner's proposed endeavor is unclear. As an initial matter, as we agree with the Director that the Petitioner's subsequent submissions from her initial filing were materially changes, we will only evaluate evidence submitted with the initial petition. Although she provided information about her professional interests, background, and her current role, the Petitioner has not clearly explained her endeavor beyond generally continuing her career in the United States. In the initial petition, she stated that she would help U.S. companies by providing strategic guidance and direction in marketing, advertising, business management, and marketing analysis. But aside from mentioning her current employment in the RFE and on appeal, she did not elaborate on whether she

would carry out her endeavor by starting her own company, as a consultant to other companies, or as an employee of a company.[3] She has not, for example, identified specific clients, partners, or employers with whom she would engage in this work. The Petitioner has also not provided sufficient details about her intended projects, such as an operational plan, a timeline, or quantifiable business metrics. As a result of this lack of detail and specificity, we are unable to conclude that the Petitioner's proposed endeavor has national importance.

It is a petitioner's burden to prove by a preponderance of evidence to demonstrate eligibility for the benefit sought. *Matter of Chawathe*, 25 I&N Dec.at 376. A petitioner must also support assertions with relevant, probative, and credible evidence. *Id.* As the Petitioner has not done so here, she has not sufficiently established that her proposed endeavor in the United States will have national importance under the first *Dhanasar* prong.

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining eligibility requirements for the requested national interest waiver. *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 the applicant did not otherwise meet their burden of proof).

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.

ORDER: The appeal is dismissed.

[3] To the extent the Petitioner's endeavor involves her current employer, the record reflects that she was not working with this employer until after she filed the petition; thus she cannot establish eligibility with these facts.