U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29811023

Date: FEB. 28, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is human resources director who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business, 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 Nebraska Service Center determined that despite qualifying for the underlying EB-2 visa classification as an individual holding an advanced degree,[1] the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that her endeavor has national importance,[2] (2) did not demonstrate that she is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States. 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 because the Petitioner did not establish that her specific proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the *Dhanasar* framework. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *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).

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[1] The record contains and degree certificate and corresponding transcript showing that the Petitioner completed eight semesters of coursework and was awarded a bachelor's degree in administration in August 2017 and that she subsequently attained at least five years of progressive experience in her specialty as required by 8 C.F.R. § 204.5(k)(2).

[2] The Director determined that the Petitioner's endeavor was shown to have substantial merit.

In addressing the issue of national importance, the Director pointed out that we focus on the Petitioner's specific endeavor, rather than the importance of the field or profession in which the Petitioner will work. Having considered the Petitioner's endeavor to own and operate a company that provides human resources consultation services, the Director determined that the impact of that endeavor would be limited to the Petitioner's company and its clients and would not broadly impact the field of human resources or offer substantial positive economic benefits as contemplated by *Dhanasar*. 26 I&N Dec. at 890. The Director also acknowledged the Petitioner's submission of an updated personal statement and business plan, noting the projected staffing and payroll expense over the course of five years. However, these submissions were deemed insufficient for the purpose of demonstrating broad impact at a level that is commensurate with national importance. Further, the Director determined that labor shortages in a particular field, such as those the Petitioner mentioned, do not render the proposed endeavor nationally important. After contemplating the projected employment levels, business activity, and tax revenue of the proposed endeavor, the Director concluded that the Petitioner did not provide sufficient evidence that her endeavor would offer substantial economic benefits or that it would substantially impact the U.S. job market at a national importance level.

On appeal, the Petitioner argues that the Director "failed to apply the correct standard of review under *Dhanasar*" when reviewing the record. We note, however, that except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that she has provided evidence sufficient to demonstrate eligibility for the EB-2 classification and a national interest waiver, she does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner further contends that the Director did not adequately evaluate her business plan, which she claims contains a detailed analysis of her company. However, regardless of the business plan's level of analysis, the Petitioner did not address the more critical point, which is that the business plan does not demonstrate that the potential prospective impact of the proposed endeavor would be go beyond the Petitioner's company and the clients it would service. The Petitioner also places great emphasis on her personal statement where she stressed the need for an experienced human resources director and the ability of such a person to create business benefits for U.S. businesses, such as maximizing profits, boosting economic growth, and creating jobs. However, the Petitioner did not offer evidence that the benefits to the regional or national economy resulting from her human resources consulting work would reach the level of substantial positive effects as contemplated in *Dhanasar*.

And while the Petitioner contends that the Director overlooked her submission of an expert opinion letter from [redacted] a professor of marketing management at [redacted] she does not establish that the letter sufficiently demonstrated the proposed endeavor's significant potential to employee U.S. workers or to offer other "substantial positive economic effects." *Matter of Dhanasar* at 890. For example, the letter does not offer any analysis or numerical breakdowns to substantiate

how the Petitioner's human resources consulting would benefit the nation's labor market, economy, and business industry. Nor did the professor demonstrate that any increase in the client's revenue attributable to the Petitioner's human resources consulting services stands to substantially affect economic activity regionally or nationally. Likewise, the Petitioner claimed that the Director overlooked her submission of a testimonial statement from a U.S. client, but she does not explain how the client letter demonstrates the broader impact of the Petitioner's endeavor to satisfy the national importance element of the first prong of the *Dhanasar* framework.

We also find that the Petitioner's reliance on two AAO non-precent decisions is misplaced, as each petitioner in the cited decisions was seeking classification as an individual of extraordinary ability (EB-1), which is different from an immigrant visa classification as a member of the professions holding an advanced degree or an individual of exceptional ability (EB-2) sought by the Petitioner in the instant case. Also, neither decision was published as a precedent and, therefore, these decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

In sum, the Petitioner has not established that the previously submitted evidence, some of which has been resubmitted on appeal, demonstrates that her endeavor rises to the level of national importance.

Accordingly, we adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's endeavor. *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). As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.