U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29534190

Date: FEB. 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a fashion designer, seeks classification as an advanced degree professional. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is 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.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See also 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).

- 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.

II. ANALYSIS

The Director did not make a finding as to the threshold question of the Petitioner's eligibility for the underlying EB-2 immigrant classification. However, based upon the evidence in the record that the Petitioner has obtained the foreign equivalent of a bachelor of arts degree in English literature followed by at least five years of progressive experience in fashion design, we conclude that the Petitioner has demonstrated qualification for the EB-2 classification as an advanced degree professional.[2] As to the Petitioner's request for a national interest waiver, the Director concluded that the Petitioner established that the proposed endeavor has substantial merit and that she is well-positioned to advance it. However, the Director concluded that the Petitioner did not establish the national importance of the proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States.

The Petitioner proposes to contribute to the field of sustainable fashion by continuing to develop a "sustainable bespoke fashion design practice." The Petitioner states that her design practice will implement a new production model that will reduce waste, increase the material life cycle of clothing, shift consumer mindset toward conscious purchasing, and raise awareness of sustainable fashion. To accomplish these goals, the Petitioner describes her production model as being "end-to-end," using novel sewing techniques that increase the lifespan of garments, using certain styles and fittings that are more versatile, and designing clothing particularly to the wearer's specifications. The Petitioner plans to open a showroom in Washington, D.C. for design, production, and retailing, and states that she will also use the space for community-focused talks, workshops, and exhibitions.

In concluding that the Petitioner did not establish the national importance of the proposed endeavor, the Director noted that the relevant question in this determination is not the importance of the field, industry, or profession, but rather the specific, proposed endeavor. The Director concluded that the record is insufficient to show that the Petitioner's fashion designs would solve the problem of the lack of sustainable fashion designs and the industry's negative production habits. The Director also noted that broad assertions are not sufficient to show that a petitioner's specific proposed endeavor has national importance. The Director concluded that, overall, the evidence did not demonstrate that the proposed endeavor will have a potential prospective impact, such as evidence that it will have national or global implications within the field, significant potential to employ U.S. workers, substantial positive economic effects, or will broadly enhance societal welfare or cultural or artistic enrichment.

[2] A bachelor's degree or the foreign equivalent followed by at least five years of progressive experience in the specialty is equivalent to a master's degree. 8 C.F.R. § 204.5(k)(2). Although the regulation requires that evidence establishing the qualifying experience be in the form of "letters from current or former employer(s)," we note that the employer letters submitted by the Petitioner demonstrate only approximately two years of employment experience. Nevertheless, based upon the other evidence in the record of the Petitioner's experience in operating her own design studio, we conclude that the record demonstrates, by a preponderance of the evidence, that the Petitioner has at least five years of experience in the field of fashion design. *See* 8 C.F.R. § 204.5(g)(1) (stating that if such evidence is unavailable, other documentation will be considered).

On appeal, the Petitioner asserts that she has established eligibility for a national interest waiver. Specifically, she states that the Director's decision considered only the fashion designs that her design practice creates, rather than the production model that she employs in the design practice. The Petitioner asserts that this production model is analogous to an improved manufacturing process, as contemplated by *Matter of Dhanasar*, and therefore demonstrates the national importance of the endeavor. The Petitioner also contends that the endeavor has national importance based upon cultural and artistic enrichment through the artistry and craftmanship of her fashion designs and that it enhances societal welfare by promoting sustainable development and culture.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Regarding the Petitioner's production model, the Petitioner asserts that this model has broad implications for sustainable development in the fashion industry, and the environment at large, and is therefore nationally important. In describing this production model, the Petitioner states:

> Through an end-to-end production model . . ., I aim to further develop three aspects that can extend a garment's life cycle and therefore disrupt the current short life cycle of clothing products: technical obsolescence (material failure), style obsolescence (trend and tastes), and "psychological obsolescence" (when a garment fails to mirror the desired self-image).

To reduce technical obsolescence, the Petitioner states that in her production model she employs novel sewing techniques such as varying the stitching tension around "volatile parts" of a garment, for example the shoulder seam, to increase strength and flexibility and reduce the likelihood of breakage. The Petitioner states that she also uses hand stitching where needed. To address the issue of style obsolescence, the Petitioner states that she creates "designs that transition between multiple social settings." Finally, the Petitioner's production model addresses the issue of psychological obsolescence because the garments are bespoke, and the wearer's individual specifications and needs are considered in their creation. Additionally, to produce custom garments in a shorter timeframe and a less labor- and resource-intensive manner, the Petitioner uses pre-drafted patterns than can be modified based on the wearer's measurements and a 3D virtual prototyping software program to create an avatar of the wearer and a virtual image of the garment to be created. The Petitioner's production model also uses relaxed fit silhouettes that are adaptable to a wider range of body types. Finally, the Petitioner describes using natural fibers to reduce environmental impacts and using digital printing on unbleached fabric to reduce chemical waste from dyes.

The Petitioner contends that this production model qualifies as an "improved manufacturing process" within the meaning of *Matter of Dhanasar*. *Id.* at 889. Upon de novo, however, we conclude that the record does not clearly establish how the Petitioner's model or methods are sufficiently innovative or

distinct from those in other similar custom design studios to represent an improvement in a manufacturing process. For example, the record does not establish that the Petitioner's technique of using hand stitching or of varying the stitching tension around seams is markedly different from the techniques used by other designers in constructing high quality garments. Additionally, the record does not establish that the production model's use of natural textiles, relaxed fits, and pre-drafted patterns are specifically the advent of the Petitioner. The Petitioner has not explained how the use of sewing patterns is either unique to the Petitioner's production model, or that the production model uses sewing patterns in an original or innovative manner. We also note that the 3D virtual prototyping program that the production model employs is a commercially available software program that appears to be widely available for fashion design, and the record does not establish how or if the Petitioner's production model is using this software in a manner other than its current application in the field. While the Petitioner's goal of creating fashion designs while reducing waste, increasing the lifespan of garments, and raising awareness of sustainable fashion is laudable, the Petitioner has not established that her production model represents a specific method or methodology that is sufficiently unique such that its introduction or advent has the potential to have a broad impact on the field.

The Petitioner also contends on appeal that the proposed endeavor is nationally important because it will enhance cultural and artistic enrichment and societal welfare. The Petitioner points to the letters of recommendation and media articles in the record in support of this claim. The record does contain media reports that discuss the Petitioner and her design practice. For example, the record contains an article from a local lifestyle publication with one such story, which states that the studio's "designs are crisp in structure, reminiscent of architecture." The record also contains a feature story from a Singaporean newspaper about young designers who are preserving traditional designs and includes the Petitioner as one of those designers. The record also contains letters of recommendation. One of the letter writers, who states that they were a mentor to the Petitioner while she participated in a fashion competition, describes being impressed by the Petitioner for "blending modernity and tradition" and states that she "pushed the boundaries of fashion technology by incorporating 3D virtual prototyping and creating her own original textiles using digital printing." Another letter writer, a prior supervisor of the Petitioner, states that they are "encouraged by her focus on sustainability—using natural and biodegradable fibers, responsibly sourced and ethically made materials, and local production" and that they "appreciate the artistry and quality of her design, fit, and material." The prior supervisor also states that the Petitioner is "able to provide her clients a unique experience that fits them perfectly and reflects their personal style" and that it "is not often that one finds a fashion designer who is able to both construct and tailor a garment according to her client's needs, and retain an original design aesthetic." Another letter writer praises the Petitioner's "active involvement in local events," which "raises our community's appreciation of the arts." This letter writer also states that the proposed endeavor's "focus on local production will reduce waste and emissions generated from overseas production, boost the local economy, and maintain a high quality local skill base."

While the letter writers speak highly of the Petitioner, her design aesthetic, and her commitment to sustainable fashion, and the media articles reflect that the Petitioner has received attention for her design work, we conclude that this evidence does not sufficiently establish the national importance of the proposed endeavor. As an initial matter, evidence of the Petitioner's skills, knowledge, and expertise in the field generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether she is well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner's

specific endeavor—to continue operating her design studio while employing her production method—has national importance under *Dhanasar's* first prong. We conclude that the neither the letters nor the media articles sufficiently establish this claim. Although the Petitioner's mentor asserts that the Petitioner "pushed the boundaries" by using 3D virtual prototyping and digital textile printing, as discussed above, the record does not sufficiently establish that these tools and methods are distinct to the Petitioner's model. Further, although one of the letter writers claims that the Petitioner's endeavor will "reduce waste and emissions" related to the fashion industry, the record does not establish that the Petitioner's proposed endeavor has the potential to do so at a level commensurate with national importance, and the letter writer does not establish their expertise to assert this claim. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert letters is not presumptive of eligibility. *Id.* Although the recommendation letters carry persuasive weight as to the Petitioner's design expertise, for the reasons stated above, we conclude that they do not establish that the proposed endeavor has national importance.

We must consider the scope of the specific endeavor that the Petitioner proposes, as established by the record. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the evidence in the record establishes that the Petitioner will operate her design studio using her particular methods and designs, including relaxed fits, natural fibers, pre-cut patterns, a software program, and digital textile printing. Even if the Petitioner continues to be successful in this endeavor, and operates her showroom including talks, workshops, and exhibitions, this is primarily an impact on the Petitioner's individual clients and collaborators. Without further evidence or information to establish that the scale of the Petitioner's endeavor has the potential to broadly impact the field, or a plan to spread a unique production methodology through the fashion industry, the Petitioner has not demonstrated by a preponderance of the evidence that this specific endeavor rises to the level of national importance.

Although the record reflects the Petitioner's experience as a fashion designer and her commitment to provide high quality garments to her clients in an environmentally sustainable manner, the Petitioner has not offered sufficient information or evidence to demonstrate that the prospective impact of her proposed endeavor rises 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 extend beyond his students to impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her clients to impact the fashion industry at a level commensurate with national importance.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the third *Dhanasar* prong but, having found that the evidence does not establish the Petitioner's eligibility under the first prong, we will not address those arguments here. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs. *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 is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.