U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28446570

Date: JAN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a petroleum engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/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 the record did not establish that the Petitioner merited a national interest waiver as a matter of discretion. 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 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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[3], 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.

II. ANALYSIS

The Petitioner is a petroleum engineer with relevant education and experience who proposes to manage and provide services through her company, which she recently established in the [redacted], Texas area. In her decision, the Director determined that the Petitioner did not meet any of the three prongs of the *Dhanasar* analytical framework, and had thus not established that she merited a national interest waiver of the EB-2 classification's job offer requirement. For the reasons discussed below, we agree that she has not established that her proposed endeavor is of national importance, and therefore that she does not meet the framework's first prong and does not merit a national interest waiver.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, 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. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner has established a company through which she intends to provide consulting services for small businesses, including the development of business plans and organizational models, as well as project management services for companies in the oil and gas industry. In her decision, the Director concluded that this proposed endeavor was of substantial merit, but that the Petitioner did not demonstrate it to be of national importance. Specifically, the Director reviewed the business plan for the Petitioner's company and determined that its projections for revenue and job creation would not have the type of "substantial positive economic effects" that were noted in *Dhanasar* as positive

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[3] *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).

factors in establishing the national importance of an endeavor. *Id.* at 890. The Director concluded that the Petitioner's proposed endeavor would not have broader implications within its field or otherwise be of national importance.

On appeal, the Petitioner asserts that the Director erred in focusing solely on the business plan for her company and not considering the other evidence she submitted, including her statement (which she refers to as her "endeavor"). But that statement devotes fourteen of its eighteen pages to a description of her career achievements, and only a few paragraph to a description of her proposed endeavor. That description states that the Petitioner plans to establish a company to "provide specialized advice… in matters of oil fields," and adds that this includes "giving talks, conferences, tutorials, among others." The same is true of the Petitioner's response to the Director's request for evidence (RFE), although here she adds that the company's "main services" are the creation of business plans, strategic plans, and organizational models, while also offering project management services for energy, construction and engineering projects in addition to the previously mentioned consulting services for the oil and gas industry. As the business plan for the company provided the most details about how this proposed endeavor would potentially be of substantial merit and national importance, we disagree that the Director erred in focusing on this evidence in her analysis under the first prong of the *Dhanasar* analysis. Further, the Petitioner does not explain how the other evidence that the Director did not analyze under the first prong, including letters of recommendation and her educational and training credentials, establish the national importance of her proposed endeavor.

The Petitioner also explains on appeal that her statement describes her expertise in oil well operations and management in detail, and that it is this expertise, which she would use to provide the services described, that is of national importance. However, factors such as a petitioner's educations, skills, and record of success in activities relating to the proposed endeavor are analyzed under the second prong of the *Dhanasar* framework, wherein we determine whether the individual is well positioned to advance their proposed endeavor. As noted above, the analysis under the first prong is forward-looking, considering the specific endeavor's potential prospective impact.

In addition, the Petitioner conflates the two elements of the first prong of the *Dhanasar* framework when quoting the language of our precedent decision in her brief. When arguing that the Director "violated the criteria set forth in *Dhanasar*" by analyzing her proposed endeavor's potential substantial positive economic impact, she underlines and bolds the language stating that endeavors may qualify without showing economic benefits for the United States. *Id.* at 889. But that language pertains to the first element of the first prong, substantial merit, which the Director determined her proposed endeavor met. While *Dhanasar* does not require a petitioner to show potential substantial positive economic effects of their proposed endeavor to establish its national importance, it was not an error for the Director to consider that factor when making her determination.

The Petitioner further argues on appeal that her proposed endeavor meets both elements of the first prong of the *Dhanasar* framework "due to the area of my skills and expertise demonstrated during more than 18 years in the Venezuelan oil industry, with national significance." But *Dhanasar* notes that it is the individual's specific endeavor that is the focus of the first prong analysis, not that of the field or industry in which the individual proposes to engage. *Id.* It is the proposed endeavor's potential broader impact on the field or industry that must be shown to be of national importance, not the industry itself.

We note that the Petitioner mentions that her proposed endeavor also includes the provision of training programs for workers in the oil and gas industry, specifically in her areas of expertise. However, at no point does she provide details on the content, structure, development, or means of delivery of this training. Her business plan, which describes the services to be offered by her company, does not list training amongst those services. Further, even if such detail had been provided, the Petitioner has not established that her training program would have broader implications for the U.S. oil and gas industry beyond those workers that would be trained. Much like the proposed teaching activities of the petitioner in *Dhanasar*, here the Petitioner has not shown that her training activities would impact the industry more broadly. *Id.* at 893.

Finally, as noted by the Director in her decision, the business plan includes projections of income and staffing levels. We agree with the Director that these projections are not well supported and do not reflect that the Petitioner's proposed endeavor has a significant potential to employ U.S. workers or has other substantial positive economic effects. *See id.* at 890.

For all of the reasons discussed above, we conclude that the Petitioner has not established that her proposed endeavor is of national importance.

III. CONCLUSION

As the Petitioner has not shown that she meets both elements of the first prong of the *Dhanasar* analytical framework, she has not established that she merits a national interest waiver of the EB-2 classification's job offer requirement. Since 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 second and third prongs of the framework. *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 an applicant is otherwise ineligible). Also, since the Director did not make a determination regarding the Petitioner's eligibility for the underlying EB-2 classification, we reserve that issue as well.

ORDER: The appeal is dismissed.