U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35143805

Date: JAN. 21, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree 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 Petitioner did not establish her eligibility for the requested national interest waiver. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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). Upon review, we will dismiss the motion.

In our latest decision, we concluded that the Petitioner failed to establish the national importance of her proposed endeavor, a digital marketing and mobile application consultancy company that she plans to own and operate in the United States, as required under the first prong of the *Dhanasar* analytical framework.[1] *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) (stating that United States Citizenship and Immigration Services (USCIS) may grant a national interest waiver, as a matter of discretion, if the petitioner demonstrates, among other requirements, that the proposed endeavor has both substantial merit and national importance.). We further determined that the Petitioner had not established her eligibility for the underlying EB-2 classification as an advanced degree individual, as required at section 203(b)(2)(A) of the Act. However, we reserved consideration of the Petitioner's eligibility for the requested EB-2 classification, as well as her asserted eligibility under *Dhanasar's* second and third prongs, as the resolution of the issues pertaining to the Petitioner's eligibility for the requested national interest waiver under the first prong of *Dhanasar* analytical was dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

[1] As the resolution of the issues pertaining to the

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion to reopen, the Petitioner submits reports on the U.S. and digital marketing industries, and a news article on the importance of rural access to high-speed internet in Florida. The Petitioner asserts that these new facts establish eligibility, as, when considered with the totality of the record, they demonstrate that the proposed endeavor is of national importance as shown through its prospective positive economic impact.

The Petitioner relies in part on the importance of the marketing industry and professionals to establish the national importance of the proposed endeavor and offers a general discussion of the important role that marketing plays in a wide variety of businesses and organizations. The Petitioner references the industry articles submitted on motion which indicate the importance of the marketing industry. However, when considering the national importance of a proposed endeavor, the industry or customer base a petitioner will serve alone is not sufficient to establish national importance; instead we focus on the broader implications of "the specific endeavor that the foreign national proposed to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. While the industry reports submitted on motion demonstrate the importance of the marketing industry, they are insufficient to demonstrate the proposed endeavor's broader impact on the field.

The Petitioner further argues that the national importance of her proposed endeavor is shown through its prospective economic impact. As she did on appeal, the Petitioner claims that the proposed endeavor will create 42 jobs directly and that it will create additional jobs as clients expand and realize increased profits. The Petitioner further contends on motion that, as the proposed endeavor will be located near rural Florida communities, it will contribute "significantly" to job creation, personal income, and a strong tax base. In *Dhanasar* we stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. The business plan in the record, while indicating that the proposed endeavor anticipates creating 42 jobs, does not explain the bases for these projections, nor does it address the endeavor's impact on rural communities in Florida. The article submitted on motion does not address the potential economic benefits of the proposed endeavor to rural Florida; rather it focuses on the importance of access to high- speed internet in that region. Further, the Petitioner does not offer evidence to demonstrate that the areas of Florida in which the proposed endeavor intends to operate are economically disadvantaged areas or otherwise to show that her proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. While any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of her proposed endeavor stands to offer broader implications in her industry or to generate substantial positive economic effects in Florida or the United States as a whole. Even had the Petitioner provided such evidence, the record does not demonstrate that the benefits to the regional or national economy

resulting from her undertaking reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.*

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

On motion, the Petitioner contests the correctness of our prior decision, asserting that we erroneously applied the preponderance of the evidence standard to the record before us and further that we erred when applying the "national interest" standard. On motion, the Petitioner refers to a list of evidence that may establish national importance and contends that we failed to consider "each individual requirement in the already established list of national importance criteria."[2] Here, the Petitioner misinterprets the noncomprehensive list provided in the Director's decision as a set of elements required to establish national importance. The listed evidence may assist a Petitioner in establishing a proposed endeavor's national importance but does not constitute a set of required criteria. Rather, to satisfy the first prong of *Dhanasar* the Petitioner is required to demonstrate the substantial merit and national importance of the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner argues on motion that we failed to adequately consider her proposed endeavor's impact on a matter that a government entity has described as a having national importance. In our decision, we acknowledged the Petitioner's argument that, because the federal government recognizes the importance of developing small and medium-sized business, and her enterprise is a small business and will serve small and medium-sized businesses, the proposed endeavor is of national importance. We noted that when determining whether the proposed endeavor has national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* On motion, the Petitioner does not identify evidence in the record below establishing the proposed endeavor's impact on a matter that a government entity has described as having national importance, that a government entity has a particular interest in her proposed endeavor, or explain, beyond her statement, how we erred in failing to consider such evidence.[3]

The Petitioner repeats her claims on motion regarding the proposed endeavor's ability to develop marketing plans for customers. She contends that these plans that will maximize the companies' results and assist them in realizing their goals, and in turn this shows its national importance. In our decision, we acknowledged these claims but concluded that the record had not shown that these benefits would be realized by her clients. We noted that in *Dhanasar* the teaching activities proposed by the petitioner were not shown to have a broader impact on the field of STEM education. *See id.* at 893. We concluded that, similar to the petitioner in *Dhanasar*, the Petitioner had not shown that these benefits, if realized, would have a broader impact in the field. The Petitioner does not identify evidence in the record before us to show or explain how our conclusion was incorrect, nor does she identify any law or policy that we incorrectly applied in reaching this conclusion.

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[2] The Director's decision provided a list of evidence that may establish the proposed endeavor's national importance that included, but was not limited to, for example, documentation showing that the "endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives."

[3] *See generally* 6 *USCIS Policy Manual* F.5(D)(3), http://www.uscis.gov/policymanual.

The Petitioner also contends that we erred in "equat[ing] the lack of geographical implication and the lack of potential to employ U.S. workers as failure to show national importance." The Petitioner posits on motion that the proposed endeavor's national importance is shown both in positive regional and national economic impacts. She explains that, because she is an entrepreneur creating a small business in Florida, her proposed endeavor will have positive economic impacts regionally in Florida. As discussed above, the business plan in the record does not address the potential regional economic impacts of the proposed endeavor. Similarly, the Petitioner contends that her proposed endeavor would generate the direct and indirect jobs discussed above and also would more generate business for the American economy. In our decision we concluded that the Petitioner had not sufficiently substantiated these job-creation claims and had not established that the proposed endeavor would generate positive economic impacts rising to the level anticipated in *Dhanasar*. *Id.* at 890. On motion the Petitioner does not identify other evidence in the record before us at the time of our decision to show or explain how such evidence demonstrates that we reached our conclusion in error.

Finally, the Petitioner argues that we erroneously concluded that she does not hold the foreign equivalent of a U.S. bachelor's degree. She contends that she also possesses twenty years of progressive post-degree experience as shown by affidavits and therefore is an advanced degree professional.[4] *See* 8 C.F.R. § 204.5(k)(2). In our decision, we determined that the record did not show that the Petitioner held a single-source foreign equivalent degree as required by 8 C.F.R. § 204.5(k)(2).[5] We withdrew the Director's finding to the contrary but noted that even had we agreed with the Director, the record reflected that the Petitioner completed her second degree, a bachelor of science in August 2019 and filed the petition in November 2022.[6] Therefore, we concluded that the Petitioner had not shown that she was an advanced degree professional as she had not acquired five years of progressive, post-degree experience prior to filing the petition. The Petitioner does not point to evidence in the record below sufficient to establish that we erred in reaching this conclusion. While the affidavits and letters in the record that she references on motion reflect twenty years of post-degree experience, this dates from her first bachelor's degree that required three-and-a-half years of study. A U.S. baccalaureate degree generally requires four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). As a result, foreign degrees based on three-and-a-half years of education do not generally equate to U.S. bachelor's degree and cannot qualify individuals as a member of professions holding an advanced degree or its equivalent.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established

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[4] The Petitioner also notes that the Director's decision concluded that she had established her qualification as an advanced degree professional. However, we are not bound by service center or district director's decisions. *See, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam).

[5] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") Where combinations of education or experience may equate to baccalaureate degrees, the Act and regulations state so explicitly. See section 214(i)(2)(C) of the Act, 8 U.S.C. § 1184(i)(2)(C) (allowing H-1B workers to have "experience in the specialty equivalent to the completion of such [bachelor's] degree"); see also 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) (stating H-1B workers may have "education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate . . . degree"). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

[6] The record shows that the Petitioner held two distinct bachelor's degrees, one requiring three-and-a-half years of study, and a second completed in 2019 requiring two years of study.

that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.