U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28962826

Date: JAN. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 a waiver of the required job offer and thus of the labor certification, would not be 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 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. Next, a petitioner must then demonstrate 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

[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).

II. ANALYSIS

A. EB-2 Classification

In order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. We observe that in denying the petition, the Director did not provide a determination addressing whether the Petitioner submitted evidence sufficient to show that she qualifies for this classification.

As discussed below, the Petitioner has not presented adequate reasons or evidence on appeal to overcome the Director's determination that she is ineligible for a national interest waiver, as a matter of discretion. Therefore, we need not remand the matter to the Director to determine her eligibility for the EB-2 classification. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve this issue. *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).

B. National Interest Waiver

The remaining issue 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. The Director concluded in her denial that the Petitioner's prospective work has substantial merit and is of national importance under *Dhanasar's* first prong, but she also determined that the Petitioner did not satisfy the second and third prongs of the *Dhanasar* framework. For the reasons discussed below, we withdraw the Director's determination that the Petitioner has established her eligibility under *Dhanasar's* first prong. Based on our de novo review of the record, we conclude the Petitioner has not sufficiently demonstrated the substantial merit and the national importance of her proposed endeavor under the first prong and that she is well-positioned to advance it under the second prong of the *Dhanasar* analytical framework. While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner indicated in part 6 of the petition that she intends to be employed as a judicial law clerk "assisting judges in court or by conducting research or preparing legal documents." She quoted these job duties verbatim from the general job description for judicial law clerks on O*NET, an employment information database sponsored by the U.S. Department of Labor. *See* https://www.onetonline.org/link/summary/23-1012.00. As such, the passage above describes the general duties of a judicial law clerk but gives no specific details about the Petitioner's proposed endeavor.

She also generally asserts in her professional plan that her goal is to "act incisively to be a renowned and valued professional as a reference for many people. Organize government offices and give the American people great satisfaction with the excellent service she is capable of performing." She observes:

> Local governments will continue to need court, municipal, and license clerks to do tasks such as prepare case dockets, draft agendas, and issue licenses and permits. Eligibility

> interviewers will continue to determine whether government assistance, such as unemployment or Social Security benefits is appropriate for people applying for it."

While her statements suggest that she *might* seek public sector administrative employment at the municipal, state or federal level in the United States, her professional plan offers little insight into the specific aspects of the endeavor that she intends to pursue.

We acknowledge the various documents the Petitioner provided regarding the importance of the legal industry and the law clerk occupation in the United States. However, when determining whether a proposed endeavor would have substantial merit or national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889-890. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("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.") Simply being employed in an occupation does not constitute an endeavor for the purposes of these proceedings. *Id.*

Similarly, the Petitioner also submitted a letter outlining an entirely different goal that she intends to pursue which involves embarking on "[a]n international career in a company where she can be relevant and add value in projects to make a difference in the American territory." Towards that end she will:

> [P]rovide her services to U.S. and Brazilian corporations, willing to advance and exchange business between those countries. Specifically, she is capable of helping U.S. companies to establish businesses in Brazil, from formation to dealing with tax and labor. Likewise, many Brazilian companies interested in expanding prefer a consulting firm with experience within both markets to help them expand into the United States.

Importantly, the Petitioner has not provided information sufficient to illustrate how she will realize her goal of offering international trade consulting services to firms in the United States and abroad. She has also not described how she will apportion her time between working as public sector judicial law clerk and working as an international trade consultant in the private sector. Nor has she detailed whether she will focus on one of these activities instead of the other. The Petitioner must resolve this inconsistency and ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In her appeal brief, the Petitioner incorporates many of the same general explanations that she offered to the Director regarding her proposed endeavor and reasserts she is well-positioned to pursue it. She avers that her years of professional experience has "positioned her to become an asset to a wide range of companies within the [U.S.]" As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we consider information about her current positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

On appeal, the Petitioner shares that she is "using her skills and knowledge gained from her professional experience [abroad] as a legal clerk to work on projects of national importance while contributing to international initiatives." The Petitioner's statements on appeal reaffirm her intention to continue working in the field of law, noting that she is currently working in a capacity where she assists U.S. companies' efforts in obtaining building permits. She points to a "complex construction case" that she recently was involved in which she assisted a company with obtaining a building permit "where the client opted for a larger boat platform than the [c]ounty allowed." She notes that she worked hard on this permit application, supporting the company's arguments with relevant information and data, in order to obtain a waiver from the local city hall, and that she demonstrated "knowledge of the legislation and a great argumentative capacity in solving problems." But she does not further explain how this project - which appears to involve obtaining a building permit from a local municipality - has national implications that rise to the level contemplated by the *Dhanasar* framework.

In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Here, the record suggests that the Petitioner's endeavor *may* entail working as a legal clerk assisting companies in their efforts to obtain local construction permits, and as such, the record does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently impact U.S. interests or the legal and construction industries more broadly at a level commensurate with national importance.

While she also indicates that she *might* be employed as an international trade consultant, she has not identified the means through which she will pursue helping U.S. companies to establish businesses in Brazil, and helping Brazilian companies expand their businesses in the United States. As a result, she has not offered sufficient evidence to established how the impact of her work in this role will be of national importance. Collectively considering the evidence, we conclude the Petitioner has not demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

Without more information about her specific proposed endeavor and how she will apply her knowledge and experience in the United States, the Petitioner has not sufficiently established her proposed endeavor sufficient for us to determine that her work in the United States will have substantial merit and national importance. In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance under the *Dhanasar's* first prong. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id*. The Petitioner has not done so here.

Additionally, in order to determine whether an individual qualifies for a national interest waiver, we must also rely on the specific proposed endeavor to determine whether they are well positioned to advance it under the *Dhanasar's* second prong. *Dhanasar* at 889-90. Because the Petitioner has not provided sufficient and consistent information regarding her proposed endeavor, we also cannot conclude that she meets the second prong. For the sake of brevity, we will not discuss other deficiencies in the record with regard to the Petitioner's eligibility under *Dhanasar's* second prong.

Accordingly, the Petitioner has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of her eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. at 516.

ORDER: The appeal is dismissed.