U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29460885

Date: JAN. 30, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an occupational health and safety specialist, seeks classification as a member of the professions holding an advanced degree. *See* 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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 USCIS may, as 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 determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The issue before us on appeal 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 Petitioner worked in various occupational health and safety positions for employers in Turkey from 2013 to 2020. She entered the United States in August 2020 as a B-2 nonimmigrant visitor and filed the petition in May 2021. In July 2022, she began working as a cybersecurity analyst for a "[n]ational company focused on grocery, mobile and web application."

The first *Dhanasar* prong, 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. While that impact can take different forms, such as economic benefit or advancement of knowledge, the Petitioner must show broader implications arising from the proposed endeavor. *See id.*

The Director concluded that the Petitioner had established the substantial merit of the proposed endeavor, but had not shown that the proposed endeavor meets the other elements of the *Dhanasar* national interest framework.

A "Professional Plan" submitted with the petition indicated that the Petitioner intends "to work as an Occupational Health and Safety Specialist," but provided no details beyond general descriptions of what the occupation entails, such as "risk assessment and accident prevention." These general traits address the substantial merit of the Petitioner's occupation, but they do not describe the Petitioner's specific proposed endeavor and establish its national importance. Likewise, the Petitioner submitted various background materials that establish the overall importance of the field occupational health and safety, but these materials do not describe the Petitioner's specific proposed endeavor.

The Petitioner also submitted an "Advisory Evaluation" from an individual who has "published about 30 scientific works in Fluid Mechanics and Hydraulic Engineering," and has "completed about 40 projects in Engineering Software Development." The individual did not claim any background, training, or expertise in occupational health and safety. The advisory evaluation cited statistics about occupational health and safety, and provided background information, but did not describe the Petitioner's specific proposed endeavor and explain its national importance.

The Director requested "[a] detailed description of the proposed endeavor and why it is of national importance," supported by "[d]ocumentary evidence." In response, the Petitioner stated:

> My goal is to enter the American job market as an Occupational Health and Safety Specialist and be able to implement my experience and knowledge that I have gained during the last decade. . . . In the long term, I also aspire to undertake in the field of consulting, offering services to solve problems in the field I cover.

The statement provides no new details about the proposed endeavor apart from a general reference to consulting at some undefined point in the future. The Petitioner submitted documentation about her occupation, but these materials did not address her specific proposed endeavor or establish its national importance.

The Director denied the petition, stating that the Petitioner had not "shown that her employment as an Occupational Health and Safety Specialist would have broader implications for the field of occupational health and safety" or that the proposed endeavor "would impact the field of occupational health and safety more broadly, as opposed to being limited to the petitioner's clients." The Director cited the passage from *Dhanasar* in which we acknowledged the petitioner's intention to teach college-level classes, but we determined that the petitioner in that case had not established that he "would be engaged in activities that would impact the field of STEM education more broadly." *Matter of Dhanasar*, 26 I&N Dec. at 893.

On appeal, the Petitioner states that her expertise "will benefit any U.S. companies and individuals that need qualified professionals" in her field, and that her "first-hand knowledge of the commercial markets in the U.S. and Turkey" will produce "ripple effects . . . upon commercial activities, the business industry, foreign direct investments, and, ultimately, the U.S. economy." Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). The Petitioner has not submitted evidence to demonstrate the potential impact or broader implications of her proposed endeavor. The Petitioner also did not explain how the Beneficiary's "knowledge of the commercial markets in the U.S. and Turkey" is relevant to her proposed endeavor.

The Petitioner has primarily relied on general background information about occupational health and safety. The Petitioner, however, must establish the national importance of the specific proposed endeavor; it cannot suffice for the Petitioner to establish the overall importance of a particular subject, occupation, or field. Information about the overall importance of the field does not show the wider impact or broader implications of one person's work in that field. 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. *See, generally,* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. Here, the Petitioner has provided little information beyond stating her intention to work in the field of occupational health and safety.

Beyond general statements about occupational health and safety, the Petitioner discusses other occupations without establishing their relevance to this proceeding. The Petitioner states that her "proposed endeavor is unquestionably of national importance, given the significant impact of the role that business development professionals play in every type of business." The Petitioner discusses "[t]he role of a business development professional" and states: "Business development and sales professionals, such as the Appellant, are key to companies' financial stability." The Petitioner,

however, has not proposed to work in the United States as a business development and sales professional. The Petitioner also makes general arguments about entrepreneurs, but the record does not describe the Petitioner as an entrepreneur apart from the general assertion that she eventually seeks to work as a consultant.

In light of the above conclusions, the Petitioner has not met her burden of proof to show the national importance of her proposed endeavor. Detailed discussion of the remaining prongs of the *Dhanasar* national interest test cannot change the outcome of this appeal. Therefore, we reserve argument on the second and third prongs, relating to whether the Petitioner is well positioned to advance the proposed endeavor and whether, on balance, a waiver of the job offer requirement would be beneficial to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.