U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31264591

Date: JUL. 03, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a teacher, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 the Petitioner had not shown that a waiver of the required job offer, and thus of the labor certification, would be in the national interest because the record did not establish that: the Petitioner's proposed endeavor has national importance, the Petitioner is well-positioned to advance the endeavor, or, on balance, a waiver is beneficial. The matter is now before us on appeal pursuant to 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 under section 203(b)(2)(A), 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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).

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,[1] 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.

Id.

II. ADVANCED DEGREE

The Director found the Petitioner established she qualifies as a member of the professions holding an advanced degree as required for EB-2 classification. Specifically, the Director determined the record contains a U.S. baccalaureate degree or a foreign equivalent degree, and the Petitioner has at least five years of progressive post-baccalaureate experience in the specialty.

The Petitioner previously submitted a document from [redacted] granting the Petitioner a qualification as an early childhood education teacher. The Petitioner also submitted a diploma evaluation report finding she received a four-year bachelor's degree in early childhood education from [redacted] after graduating in 1998. The evaluation states the "4-year [b]acharel from Brazil represents the attainment of a level of education comparable to a [b]achelor's degree in the United States." However, other documents of record do not support the finding that the Petitioner attended a four-year bacharel program. We note the Electronic Database for Global Education (EDGE), an online resource that U.S. courts have found to be a reliable source of foreign education equivalencies, indicates that only a four- or five-year bacharel from Brazil will represent attainment of a level of education comparable to a bachelor's degree in the United States. The Petitioner's Application for Alien Employment Certification reflects she attended [redacted] for less than four years, from February 1995 to December 1998. Accordingly, the Petitioner has not met her burden of demonstrating she qualifies as a member of the professions holding an advanced degree, as she has not established she completed a foreign equivalence degree to a U.S. baccalaureate. The Director's finding on her eligibility for the underlying EB-2 visa classification as an advanced degree professional is withdrawn.

The Petitioner has not asserted that she alternatively qualifies for the underlying EB-2 immigrant classification as an individual of exceptional ability in the sciences, arts, or business.

III. NATIONAL INTEREST WAIVER

The Petitioner proposes to establish a company, [redacted] and a [redacted] which would offer attention deficient hyperactivity disorder (ADHD)-related courses and training for parents, teachers, and coordinators. The Petitioner believes her education in pedagogy, education-

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

related training courses, and work experience equip her for this endeavor. Initially, the Petitioner intends to become a certified teacher in the United States to gain experience working in the schools, so she is well-prepared to provide training through her company.

A. Substantial Merit and National Importance

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. The Director determined the Petitioner established the substantial merit aspect, the initial half of the first prong, and we concur with that determination.

As the Director found, however, the Petitioner has not met her burden of demonstrating the proposed endeavor is of national importance. The Director determined the Petitioner did not establish that the potential prospective impact of the proposed endeavor would impact the industry more broadly and sufficiently extend beyond an organization and its clients to show national or global implications.

On appeal, the Petitioner asserts the Director erroneously applied a national geographical breadth standard in examining whether the proposed endeavor has national importance. The Petitioner contends the potential impact of the endeavor should be taken into consideration, even if only one geographic area of the United States is impacted. However, the Director specifically discussed the prospective impact of the Petitioner's endeavor and examined its impact on both national and regional bases in considering employment levels and substantial positive economic effects. The Petitioner also asserts the Director erroneously indicated she is unable to demonstrate her endeavor has national importance if she cannot show significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. However, the Director properly laid out multiple factors considered in determining whether a proposed endeavor is of national importance, including substantial positive effects and significant potential to employ U.S. workers as merely two of the relevant factors. Overall, our review finds the Director properly considered whether the endeavor has sufficiently broad potential implications on the field to establish national importance. *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual.

The Petitioner resubmits on appeal a five-year business plan reflecting an intent to hire 13 instructors, one office manager, one cleaner, two sales representatives, one customer service representative, and one marketing specialist within five years of business. The plan estimates payroll expenses will rise above one million dollars by year five and contains projected profits and taxes for [redacted] and [redacted] Based on these projections, the plan further attempts to demonstrate the effect of this endeavor on the economy. However, the Petitioner did not provide supporting evidence corroborating these purported employment and profit figures. The Petitioner contends the proposed endeavor, providing professional training and qualifications for those assisting individuals with ADHS, will generate a multiplier effect of opportunities and business that go beyond the direct and indirect jobs created. Specifically, the Petitioner asserts her business would "actively create[] financial bridges, and prompt[] economic development enhancing and improving the functionality and monetary output of the nation's economy." However, these general economic claims do not contain

sufficient detail or explanation and are not supported by objective, corroborating evidence to demonstrate how the proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner asserts her proposed endeavor will offer professional training and qualification for educators and parents assisting individuals with ADHD, which rises to the level of national importance because it involves child education and related guidance. The Petitioner contends that ADHD, when unattended, can have a harmful effect on our society. We do not question the importance of identifying and managing ADHS in our society; however, in assessing national importance, we focus, not on the specific area or field at issue, but rather on the specific endeavor a petitioner proposes to undertake. *See Id.* at 889. The Petitioner asserts her proposed endeavor is unique due to her own diverse professional background and experience in the educational field. The Petitioner argues this background demonstrates her ability to adapt and excel in various settings. However, these assertions regarding the Petitioner's background and experience relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. As discussed, although we acknowledge the merit of the proposed endeavor, the Petitioner has not shown the endeavor has broader implications beyond the Petitioner's business and clients or that it has significant potential to employ U.S. workers or otherwise will have substantive positive effects. Overall, the Petitioner has not met her burden of demonstrating her proposed endeavor is of national importance.

B. Additional *Dhanasar* Prongs

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[2]

III. CONCLUSION

As the Petitioner has not demonstrated eligibility for the underlying immigrant classification and has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[2] *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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).