U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31650322

Date: JUL. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an owner and operator of a dance studio, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business, 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 meet the criteria for an EB-2 immigrant classification as an individual of exceptional ability. In addition, she concluded that the Petitioner had not shown it would be in the national interest to waive the classification's requirement of a job offer, and thus of a labor certification.

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.

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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. 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.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of*

Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2] *Id.* at 889.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

II. ANALYSIS

The Petitioner is a dancer who owns and operators a dance studio in Brazil. She proposes to operate dance studios in the United States.

A. Individual of Exceptional Ability

With her initial filing, the Petitioner stated that she was an individual of exceptional ability because she met the following four criteria:

(A) Official academic record showing a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.
(B) Letters documenting at least 10 years of full-time experience in the occupation.
(C) A license to practice the profession or certification for the profession or occupation.
(D) Membership in a professional association.
(E) Recognition for achievements and significant contributions to the industry.

As stated above, the Director found the Petitioner did not establish she was an individual of exceptional ability. On appeal, the Petitioner asks for the Director's decision to be reconsidered. She does not directly address the Director's finding on exceptional ability but indicates that she is an expert in the field of fitness and dance. In addition, she claims she would excel as a General and Operations Manager.

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[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines ·"exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. *See Dhanasar,* 26 I&N Dec. at 886 n.3.

After *de novo* review of the evidence, we conclude that the Petitioner does not meet at least three of the four criteria she sets forth nor has she shown she possesses a degree of expertise significantly above that ordinarily encountered in his field.

The first criteria the Petitioner asserts she possesses is:

> *An official academic record showing that the individual has a degree, diploma, certificate, or other similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability* 8 C.F.R. § 204.5(k)(3)(ii)(A).

In support, the Petitioner submitted a certificate from the [redacted] which states that the Petitioner completed the course of Academic Ballet for nine years from 1986-1995 or from age 9 to 18 years old. This certificate does not indicate how many hours of instruction were given during this timeframe. In addition, the Petitioner submits her high school diploma, dated 1995, which would not be a diploma related to her area of expertise.

The record does not demonstrate that the dance instruction certificate meets the plain language of the regulation. Without additional evidence, the Petitioner has not sufficiently established that [redacted] qualifies as a "college, university, school or other institution of learning" or that the certificate is "an official academic record."

We also note that, even if the Petitioner were to establish that the certificate meets this evidentiary criterion, she must still satisfy an additional two criteria as section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university, school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability. The second and third criteria the Petitioner sets forth are:

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C) and *evidence of membership in professional associations.* 8 C.F.R. § 204.5(k)(3)(ii)(E).

Profession is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation." 8 C.F.R. § 204.5(k)(2). Here, the Petitioner's proposed occupation, a dance studio owner and operator, does not meet the definition of profession as provided under the Act and in the regulations. Thus, the Petitioner cannot show she possesses a license or certificate for a profession, nor can she show membership in a professional association.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). In addition, the Petitioner has not shown she possesses a degree of expertise significantly above that ordinarily encountered in her field. Although we acknowledge the many dance awards from Brazil and recommendation letters in the record, the Petitioner has not provided evidence to show a comparison of her ability as a dance studio owner to

that which would ordinarily be encountered in the field. Therefore, we agree with the Director that the Petitioner has not achieved the level of expertise required for exceptional ability classification.

B. National Interest Waiver

The Director also found the Petitioner did not establish eligibility for a national interest waiver under the *Dhanasar* framework, finding her proposed endeavor did not have substantial merit or national importance. As we will explain below, we agree that the Petitioner has not established the national importance of her proposed endeavor. [3]

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. *Dhanasar*, 26 I&N Dec. at 889. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

On appeal, the Petitioner asserts that his proposed endeavor is of national importance because a dance studio can evolve into a hub of creativity and economic activity, nurturing its pupils, who will then become ambassadors of the art form. She states further that students will patronize local boutiques, support national manufacturers, and attend dance competitions while choreographers and instructors will bolster the broader entertainment industry. The Petitioner also describes how her dance school will impact societal welfare by promoting wellness, understanding, connection, culture, and unity. She believes her dance studio will aid in reducing obesity and promoting the health of the nation.

In her business plan, the Petitioner explains how in her first five years of operation she will open four dance studios in four states, employ 15 employees, and have total sales of almost 1.4 million dollars. She indicates that the dance industry in the United States is a 4.4-billion-dollar industry and the arts and culture industry has 5.2 million workers on payroll. The business plan does not indicate approximately how many students it will reach in the five-year plan.

Upon de novo review, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance. In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also 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

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. To evaluate whether the Petitioner's proposed endeavor will have a broad impact we look to evidence

[3] As this issue is dispositive, we reserve the issue of whether the Petitioner's proposed endeavor has substantial merit.

substantiating the "potential prospective impact" of her work. Although the Petitioner describes the far-reaching effects of the dance industry as well as arts and culture generally, she has not shown her specific endeavor will extend beyond her clientele to impact the dance industry more broadly at a level commensurate with national importance. Likewise, the Petitioner indicates that her proposed endeavor rises to the level of national importance because it will greatly improve societal welfare through wellness and understanding, but she has not shown this positive impact will extend so far as to impact our society broadly. In addition, the Petitioner has also not demonstrated that the specific endeavor she proposes to undertake would have significant potential to employ U.S. workers or have other substantial positive economic effects on a national level. For instance, the Petitioner proposes to employ 15 people in a national industry she states employs 5.2 million workers. She also projects 1.4 million in sales for an industry worth 4.4 billion. This level of activity within the industry is not broadly impactful as to rise to the level of national importance. Moreover, the Petitioner does not sufficiently support her projections with the details and evidence necessary to show how she plans to reach these goals.

Accordingly, the Petitioner has not overcome the Director's decision that her proposed endeavor does not meet the first prong of the *Dhanasar* framework. For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

As the Petitioner has not shown that she was an individual of exceptional ability, nor met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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 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.