U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31654202

Date: JUL. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a public bid procurement specialist, seeks employment-based second preference (EB-2) immigrant classification as 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 record did not establish that the Petitioner was qualified for classification as an individual of exceptional ability, and did not establish her eligibility for a waiver of the required job offer, and thus of the labor certification, as a matter of discretion. 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 the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) 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).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] 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 the requisite degree of expertise and will

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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,[3] 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. ANALYSIS

The Petitioner, a public bid procurement specialist, seeks an employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. The Director denied the underlying petition, concluding that the Petitioner had not established her qualification for the underlying EB-2 classification as an individual of exceptional ability. The Director further determined that while the Petitioner had established that her proposed endeavor had substantial merit, she had not established its national importance, that she was well positioned to advance the proposed endeavor, and that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. For these reasons the Director concluded that the Petitioner had not established her eligibility for a national interest waiver as a matter of discretion.

On appeal, the Petitioner contends that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law" to [her] detriment. Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See* 1 *USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that she has provided evidence sufficient to demonstrate her eligibility for the EB-2 classification and a national interest waiver, she does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

[3] *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).

The Petitioner further asserts on appeal that the record demonstrates both her qualification for the underlying EB-2 classification as an individual of exceptional ability and her eligibility for a national interest waiver as a matter of discretion. Upon de novo review of the record in its entirety, the Petitioner has not sufficiently demonstrated that her proposed endeavor has both substantial merit and national importance under the first prong of *Dhanasar*. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not provided adequate reasons or evidence on appeal to overcome the Director's determination that she is not eligible for a national interest waiver as a matter of discretion. Since this basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue regarding whether the Petitioner qualifies for the underlying EB-2 classification; we additionally decline to reach and hereby reserve remaining arguments concerning her eligibility under the second and third prongs of the *Dhanasar* framework. *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 D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The first prong of the *Dhanasar* analytical framework, 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. *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Dhanasar*, 26 I&N Dec. at 889. We determined in *Dhanasar* 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. 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.

The Petitioner's proposed endeavor, as described in the letter of intent submitted with her initial petition, is "to work as a Public Bid Procurement Specialist in the US, which will help the US government institutions in its processes to win public bids ("tenders") in Brazil." The Petitioner explains that "with her extensive knowledge in public contracting in Brazil, she can also promote the growth of the international trading sector in the US, which will lead to a thriving economy and a rise in the employment rate." She will do this by "providing consultation to US companies so that they will get to win public bidding from the Brazilian government institutions" and "promote foreign trade by introducing a Brazilian business network to US organizations."

With her response to the Director's request for evidence (RFE), the Petitioner provided an amended letter of intent in which she clarified that she "will act as a consultant for U.S.-based companies interested in acquiring contracts in the U.S. or companies that wish to expand their operations and contract with the Brazilian government" and will "focus on providing [her] expertise to guide these companies through the complex and lengthy bidding processes so they can successfully compete for lucrative contracts." The Petitioner stated that her "medium-term goal is to become an executive in a

large American company working directly with sales for the federal government, or in other departments like purchasing, price quotation, and contract management of private companies."

On appeal, the Petitioner asserts that the Director "did not give due regard" to the Petitioner's resume, the evidence of her work in the field, letters of recommendation, and industry articles in the record in when evaluating the proposed endeavor's national importance.[4] Upon review, the Petitioner's resume details her skills and prior work experience. The letters of recommendation in the record discuss her prior work experience and praise her expertise and success, for example describing the Petitioner as "an exceptionally qualified individual and highly recommended to act in public and private administration." The Petitioner's skills, knowledge, and prior work in her field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar,* 26 I&N Dec.at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong.

The news and research articles in the record generally discuss the field of procurement. For example, the news articles provide background information on the procurement industry in Brazil, defining public tenders and discussing the legal requirements for sales to the Brazilian government. Other documents in the record discuss a U.S partnership with Brazil to educate the international procurement workforce on best practices in that field or discuss the challenges that U.S. companies face in doing business with Brazil. However, in determining national importance, the relevant question is not the importance of the 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.* at 889.

Finally, the Petitioner argues on appeal that her proposed endeavor "[i] mpacts nationally important matters, and the national economy." Specifically, she asserts that it will offer "economic convenience and agility," will "promote growth and expansion and drive change with innovation, which thus promotes and drives national economic advantage," and will "stimulate the domestic job market" as the proposed endeavor's business activities lead to "generation of new jobs for American workers." Here the Petitioner has not offered sufficient evidence to demonstrate how her proposed endeavor would operate, or otherwise to show how her business activities would operate on such a scale as to rise to the level of national importance. For example, the research articles, which she contends on appeal "demonstrate the national importance of [her] proposed endeavor explicitly due to its economic implications," do not address her proposed endeavor or its impact. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, 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 the United States as a whole.

III. CONCLUSION

The documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. As the Petitioner has not met

[4] The Petitioner also asserts that the Director failed to consider the business plan in denying her petition. We note that the record does not appear to contain a business plan.

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. 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.