U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31762517

Date: JULY 23, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an environmental scientist working in the waste management industry, 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 Nebraska Service Center denied the petition, concluding the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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 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.

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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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

In her definitive statement, the Petitioner explained she intends to work as a general and operations manager and entrepreneur by expanding her residential compositor company in the United States. In her business plan, the Petitioner states she will co-own a waste management company providing compost bins to residential customers in Illinois, Texas, and Missouri. The Petitioner explains the company will help reduce climate and environmental impacts of food waste by converting food waste into organic fertilizers.

The Petitioner submitted evidence showing she holds a master's degree in environmental biotechnology from [redacted] in Korea. The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether she qualifies for and merits a waiver of the job offer requirement in the national interest.

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. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of her proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that her proposed endeavor would provide substantial economic benefits, would have national or global impact, or extend beyond her company to impact her industry more broadly.

On appeal, the Petitioner asserts the Director imposed a stricter standard of proof than the preponderance of the evidence and disregarded the Petitioner's resume, business plan, evidence of her work in her field, recommendation letters, and industry reports and articles. The Petitioner does not specify what portions of the Director's decision show they imposed a stricter burden of proof. De novo review of the record also reveals no error in the Director's ultimate determination.

The Petitioner claims her proposed endeavor has national importance because her company will generate jobs for U.S. workers in underutilized areas, improve the wages and working conditions for these workers, and help the local community bring investments to the region. In her business plan, the Petitioner states her company will open an office in [redacted] Texas in its third year and another office in [redacted], Missouri in the company's fifth year. The Petitioner states that both of these cities are economically distressed areas where her company will help stimulate the regions' economies. In her business plan, the Petitioner projects employing 1 person full-time, one person part-time and one person as a contractor in the first year, increasing to four full-time employees, 3 part-time employees, and 2 contractors in the fifth year. The Petitioner predicts the company's net income would be $88,480 the first year, increasing to $269,390 in the fifth year. The Petitioner has not established that the full-time employment of one to four individuals full-time, one to three individuals part-time, and one to two contractors demonstrates significant potential to employ U.S. workers even in economically depressed areas. The Petitioner's business plan also does not show that the company's projected net income is significantly higher than similar businesses or would otherwise have a substantial positive economic effect indicative of national importance. *See id.* at 890 (discussing significant potential to employ United States workers and other substantial positive economic effects as indicative of national importance). The Petitioner also did not submit any evidence of how her company would improve the wages and working conditions for its employees, and help the local community bring investments to the region.

The Petitioner also asserts her proposed endeavor has national importance because the reports and articles she submitted show how immigrant entrepreneurs contribute to the U.S. economy. The Petitioner submitted articles on operations management, immigrant entrepreneurs, immigrants creating jobs, most U.S. billion-dollar startups founded by immigrants, the immigrant workforce's support of millions of U.S. jobs, reducing the impact of wasted food, and healthy soils as the basis for healthy food production. These articles attest to the importance of immigrant workers, operations management, and the food waste industry. However, our assessment of national importance does not focus on the importance of an industry, occupation, or social issues in general, rather it "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner, or otherwise address the potential prospective impact of her proposed endeavor.

The Petitioner further claims the evidence shows the national importance of the Petitioner's proposed endeavor because she is a professional with over twelve years of experience who will successfully manage her business and contribute to the U.S. economy and national interests. The Petitioner submitted letters from past employers and colleagues that attest to her achievements. A-P-[2], the Petitioner's supervisor at the [redacted] praises the Petitioner's greywater research for the [redacted] project, which was successfully implemented. B-B- states the Petitioner worked under his direction at [redacted] in Mongolia where she was responsible for control, policy making, and monitoring policy in chemistry and biology education in secondary schools. D-B- praises the Petitioner's implementation of a document management plan when she was an office manager for [redacted] in Mongolia. C-Y-H- praised the Petitioner's work as an intern at the [redacted] in

[2] We use initials to protect the privacy of the referenced individual.

Mongolia. Although they attest to the Petitioner's past achievements at their workplaces, A-P-, B-B-, D-B-, and C-Y-H- do not address her proposed endeavor.

Other letters express confidence in the Petitioner's ability to succeed in the future, but also do not discuss her proposed endeavor. T-D- praises the Petitioner's work on the [redacted] portable shower project and states "she undoubtedly possesses the ability to bring her innovative approach and problem-solving skills to the United States," but does not discuss her specific proposed endeavor. T-S- describes the Petitioner's contributions to his non-governmental organization and states her "values, skills, and compassionate nature make her an asset to any community she becomes a part of," but does not address her proposed endeavor. Without an assessment of her specific proposed endeavor and its potential prospective impact, the support letters lack probative value in an assessment of national importance. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

The Petitioner also submitted a letter from B-B-, Assistant Professor of Accounting at the [redacted] expressing his opinion that the Petitioner qualifies for a national interest waiver. B-B- claims the Petitioner's proposed endeavor has national importance because her company's environmentally friendly disposal of compost would benefit both the environment and the well-being of citizens. B-B- does not specify, however, how the work of the Petitioner's company would extend beyond its clientele to impact her field more broadly. *See id.* at 889 (explaining "we look for broader implications"). B-B- also states the Petitioner's company's employment of individuals and payment of payroll taxes would benefit the U.S. economy. B-B- does not acknowledge the small number of people the Petitioner's company would employ, does not specify how much the company would pay in payroll taxes, or explain how this employment and tax payments would have a substantial positive economic effect on a level commensurate with national importance.

The Petitioner also claims her company will have an impact of national importance given the Petitioner's achievements and expertise. The Petitioner does not specify her achievements that have had or would have national or even global implications for the waste treatment and disposal services industry. *See id.* at 889 (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field). The Petitioner also does not explain how her company's work would extend beyond its customers to impact her field more broadly. 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 does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her company's clientele to impact her field more broadly at a level commensurate with national importance.

The Petitioner has not established that her proposed endeavor has significant potential to employ U.S. workers (even in an economically depressed area), has other substantial positive economic effects, has national or even global implications within her field, or has other broad implications indicating national importance.

B. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of her specific proposed endeavor and she does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of her eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is 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 her proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, she has not demonstrated that she is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.