U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31846133

Date: JUL. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an agribusiness consultant, 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 that the record did not establish that the Petitioner merited a national interest waiver 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.

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. [If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. (delete if doctorate not an issue)] 8 C.F.R. § 204.5(k)(2).

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 U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(3).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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,[2] 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 Director determined that the Petitioner is eligible as a member of the professions holding an advanced degree. Based upon her five-year Title of Zootechnics degree and her Master in Zootechnics degree, both from the [redacted], we agree with the Director's conclusion. Thus the sole issue on appeal is whether the Petitioner merits a national interest waiver as a matter of discretion.

The Petitioner proposes to start and direct a company, [redacted], which will provide consulting services to farmers in the areas of animal breeding, genetics, and sustainable agricultural practices. The company is based in Florida, and the Petitioner intends to offer services throughout the United States.

A. Substantial Merit and National Importance

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. *Id.* at 889.

In her decision, the Director concluded that the Petitioner's proposed endeavor is of substantial merit. Because the record reflects the proposed endeavor falls within one or more of these areas, the Petitioner established the substantial merit aspect.

Turning to the national importance of the proposed endeavor, the Director determined that the record did not support the Petitioner's claims regarding the economic impact and broader implications of her consulting business. She specifically noted that the Petitioner did not explain how the projected

[2] *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).

addition of up to 19 jobs with relatively low average salaries within would have substantial positive economic effects on a local or regional level. Substantial positive economic effects, including the significant potential to employ U.S. workers, are highlighted in *Dhanasar* as positive indicators of national importance. *Id.* at 890. The Director further determined that the Petitioner had not shown that, like the example of the teaching activities proposed by the petitioner in our precedent decision, her role as the director of her company would impact her field more broadly, beyond the clients her company would serve.

On appeal, the Petitioner emphasizes that her company would gradually increase its customer base by offering its services in additional states, and by the end of the fifth year of operation would reach farmers and ranchers nationwide. She asserts that her focus on beef-producing states alone shows that her proposed endeavor would have an impact "beyond regional boundaries" and would therefore be of national importance. But prospective impact is not evaluated solely in geographic terms, as it is the breadth of the implications of an endeavor within a particular field that we focus on in assessing national importance. *Id.* at 889. While it is logical that the Petitioner would focus her proposed endeavor in those areas where her potential clients are, this geographical focus is insufficient to show that her activities and those of her company would have the broader impact on the meat and dairy industries in the United States that she claims.

She also challenges the Director's comparison of her proposed endeavor to the teaching activities proposed by the petitioner in *Dhanasar*, stressing again that her business would offer its services to clients nationwide. But like a teacher, the implications of the Petitioner's company would be limited to those farmers and ranchers who receive its services. The Petitioner asserts that the Director overlooked "the transformative potential to my consultancy services in shaping the entire industry," and points to her plans to focus on sustainable practices and improving agricultural operations. But she does not explain how the implications of her services would reach those in the industry who are not her clients. Her business plan describes how her company would visit client farms and ranches, evaluate the conditions including soil quality, types of crops being raised, and other physical conditions, and provide an evaluation, recommendations, and subsequent assessment visits. These services are individualized and not applicable to additional farms and ranches, and therefore can only potentially transform a particular client's facilities and operations.

When 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 specific endeavor that the foreign national proposes to undertake." *Id.* The Petitioner has provided articles and reports from the United States Department of Agriculture (USDA) and other entities regarding the importance of supporting farmers and sustainable farming methods.[3] She also submitted several articles about the impact of immigrant entrepreneurs on the national economy. There is no question that the agricultural sector as a whole is vital to the prosperity of the United States, and that immigrant entrepreneurs are an important component to our economy. But these reports and articles do not address or support the

[3] The Petitioner submitted additional evidence, including additional USDA reports, with the appeal. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

national importance of the Petitioner's specific proposed endeavor of providing agribusiness consulting to individual small and medium-sized farms and ranches.

In *Dhanasar*, we 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." *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.

Here, the Director noted in her decision that the Petitioner's projection of employing 19 workers in her company in its fifth year of operation, even if it had been sufficiently supported, had not been shown to potentially have substantial positive economic effects. On appeal, the Petitioner responds that the "envisioned employment growth is intricately tied to the broader contributions of my business to the agricultural and food landscape of the United States." She also asserts that "the ripple effect of improved agricultural operations contributes substantially to increased employment opportunities and economic vitality." But the record lacks evidence that even the indirect economic effects of the agribusiness consulting services to be provided by the Petitioner's company would substantially impact the regional or national economy.

Finally, the Petitioner asserts that "my business model will actually help bring necessary innovations that would exponentially help the U.S. agribusiness industry." However, she does not elaborate on the nature of these innovations other than to refer to "customized consulting services," and again does not describe how any innovations would be widely disseminated to have a broader impact on the agricultural industry.

A petitioner must meet all three prongs of the *Dhanasar* analytical framework in order to establish their eligibility for a national interest waiver. Here, the Petitioner has not established that her proposed endeavor is of national importance, and she has thus not met the first prong of the framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the second and third prongs of the 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 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 established eligibility as a member of the professions holding an advanced degree, but has not shown the national importance of her proposed endeavor. We conclude that she has not demonstrated that she merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.