U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32505684

Date: JUL. 31, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an educator, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for a national interest waiver. 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

The first 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. *Id.*. at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 890-91.

II. ANALYSIS

The Petitioner is an educator who has focused on K-12 education. She holds a master's degree in education innovation and has worked as a bilingual educator. She has also completed curriculum planning, including translation and creation of STEM material, and she has reviewed educational data prepared for her school.

The Director found the Petitioner qualified for underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification from a U.S. employer. Specifically, the Director concluded that while the record established that the proposed endeavor had substantial merit, the national importance of the endeavor had not been demonstrated under prong one. The Director also determined that the Petitioner was not well positioned to carry out the endeavor under prong two, and that the Petitioner had not shown that a waiver of the job offer

requirement would be beneficial as required by prong three. We agree the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*.

A. The Petitioner Has Not Demonstrated that Her Endeavor Has National Importance

On appeal, the Petitioner argues that the Director's decision impermissibly narrowed the scope of the proposed endeavor by treating the Petitioner as an educator who would only contribute directly to her school or to her students. However, the Petitioner notes that in response to the Director's request for evidence (RFE) she clarified that the proposed endeavor was to facilitate science, technology, engineering, art, and mathematics (STEAM) learning across 20 school districts. She also stresses that her role as a teacher on special assignment gives her responsibilities over a broad region. She further contends that progress had been made on her proposed endeavor as two school districts have purchased her curriculum with plans for further expansion. Overall, she highlights that she is an educator with a proven expertise in tailoring STEAM curriculum and ensuring access for students, and that this information was inadequately considered by the Director.

In support of the endeavor's national importance, the Petitioner has submitted evidence including, but not limited to: an affidavit of intent; an expert opinion discussing her qualifications and eligibility for a national interest waiver; affidavits of support from employers and peers detailing her classroom teaching abilities; letters attesting to her work developing STEAM curricula as well as STEAM-focused Spanish courses; and articles providing context and background on the national teacher shortage, national STEM initiatives, and the benefits of encouraging English proficiency.

The Petitioner has not established that her proposed endeavor has a prospective potential impact rising to the level of national importance. The Petitioner contends that her endeavor should be understood as her intent to act as a facilitator for STEAM learning, initially across a specified geographical area, and eventually nationally. However, the Petitioner's initial filing contained a different proposed endeavor, indicating generally that she intended to continue her career as an educator. The Petitioner's proposed endeavor is material to whether the endeavor is of national importance. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The initial proposed endeavor did not include specifics such as facilitating STEAM learning across 20 school districts. After review of the record, it appears that the current formulation of the endeavor could not have been proposed in the original filing; her currently-defined endeavor aligns with her work as a teacher on special assignment, which she began after this petition was submitted. The applicant's effort to expand her portfolio and further her expertise in STEAM curriculum creation is commendable, but it does not reflect the endeavor originally outlined in this petition.

When considering the Petitioner's original endeavor, to continue to work in education, the national importance of this endeavor has not been established. The Petitioner highlights the importance of education to the nation, and stresses that good educators are in short supply. However, in *Dhanasar*,

we noted that the petitioner's activities in educating students would not be sufficient to give rise to a finding of national importance. Throughout the record, the Petitioner points to her background, education, and experience in her field. The Petitioner also provides several letters of support that discuss her knowledge and experience. The Petitioner's knowledge, skills, and experience in the field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor has national importance under *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. The Petitioner's students may certainly find their education valuable; however, more is required for a national interest waiver.

We are also unable to conclude that the other factors outlined in *Dhanasar* have been met in this case. Beyond generally asserting the economic benefits of well-educated students, the Petitioner has not argued that her proposed endeavor would have "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area." *Id.*

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. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that the proposed endeavor is of national importance. Because she has not met the first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.