U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31474211

Date: JULY 31, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an attorney, 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 although the Petitioner qualified for the EB-2 visa classification as an advanced degree professional, she had not established eligibility for the national interest waiver. The Director also dismissed the Petitioner's subsequent combined motions to reopen and reconsider the adverse decision upon determination that the motion did not meet the applicable regulatory requirements.

The Petitioner now appeals the dismissal of her combined motions. She states that the Director erred by finding new facts and evidence insufficient to reopen and reexamine the denial and reasserts eligibility for the national interest waiver.

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

A. Motion Requirements

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that (1) the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services' (USCIS) policy and (2) that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

B. National Interest Waiver

To establish eligibility for a national interest waiver, a petitioner must first demonstrate that they qualify for the underlying EB-2 immigrant visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires an individual to have a job offer by a U.S. employer, the petitioner must also show that they merit a discretionary waiver of the job offer requirement and, thus, of a labor certification "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:

- 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.

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. *Dhanasar*, 26 I&N Dec. 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.[2]

[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).

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for a detailed discussion of these three prongs.

II. ANALYSIS

The issue on appeal is whether the Petitioner has established that the Director erred by dismissing her combined motion to reopen and reconsider.[3] For the reasons discussed below, we conclude that the motion was properly dismissed.

In denying the Petitioner's Form I-140, Petition for Alien Workers (Form I-140), the Director noted that because some of the foreign language documents the Petitioner submitted were not accompanied by full certified English translations they could not be considered as evidence. The Director also declined to consider several documents created after the Form I-140 filing in 2019, stating generally that a petitioner must establish eligibility for the benefit sought at the time of filing and must not thereafter make material changes to the petition to conform to USCIS requirements. The Director evaluated the remaining evidence, observing that it included multiple copies of the same documents, and concluded that it was not sufficient to establish that the Petitioner's proposed endeavor of starting a conciliation and mediation company [redacted][4] in Florida had national importance, that she was well-positioned to advance it, and that, on balance, it would be beneficial to the United States to waive the requirement of a job offer and, thus, of a labor certification in her case.

In support of her combined motion to reopen and reconsider, the Petitioner submitted a brief, with some of the previously provided evidence, a professional plan and statement (professional plan), an updated business plan, and a list of legal authorities addressing various issues, including motion requirements, reinstatement of removal, federal rules of civil procedure, criminal law, waivers of inadmissibility, discretionary relief, and national interest waiver criteria.

The Petitioner contended that, contrary to the Director's determination, she had satisfied the national importance requirement "through the importance of her proposed endeavor and an impact broad enough to improve [the U.S.] economy, improve wages and working conditions for [U.S.] workers, health care, affordable housing, the environment and government agency through an intermediation using her methodology in Alternative Resolution." She further asserted that her skills and abilities were "of value for national importance" and indicated that a national interest waiver should have been granted based on the importance of her profession, her foreign qualifications, and the needs of the United States. The Petitioner further stated that the Director also erred in finding she was not well-positioned to advance her proposed endeavor, because she had provided evidence of her education, professional qualifications, work experience, awards, and licenses. As new evidence on motion, the

[3] The Petitioner did not appeal the denial of the underlying Form I-140, Petition for Alien Workers. Although some of her allegations of errors concern the Form I-140 denial, that matter is beyond the scope of our review of the Director's dismissal of her subsequent motion.

[4] The Petitioner indicated that the project would provide her clients (e.g., public or private companies and industries, individuals, executive departments, and federal and state governments) with what they need to efficiently and reliably solve problems, and that this would contribute to improving legal and business critical situations, achieving excellent results for the economy, offering the best solutions for U.S. communities, and providing special benefits for under-qualified workers, children, and social programs. She indicated that her project would be of interest to customers, users, investors, entities, and individuals who want to resolve conflicts and find alternative solutions through a modern system (face-to-face, or through web-based meetings) and the United States would benefit from her ability to lead in different situations and teach parties different ways to solve problems.

Petitioner offered a professional plan and an updated business plan, stating that her "past record of success in the same field may be used to demonstrate that the [United States] will benefit from [her] contributions that may lead to the potential creation of jobs." She also referenced previously submitted recommendation letters from former employers, co-workers, and business owners attesting to her excellent reputation and mediation skills. Lastly, the Petitioner asserted that the Director erred by finding the evidence inadequate to show that waiving a job offer requirement in her case would be beneficial to the United States, because "[a]lternative resolutions has [sic] significant implications for U.S. National Security and competitiveness in Public Administration," and her "key role" in this field indicates that her work is useful and has substantial value that would benefit the United States even assuming that other qualified U.S. workers are available.

A. Motion to Reopen

The Director concluded that the Petitioner did not establish proper cause to reopen the Form I-140 denial because she had not presented sufficient new facts supported by evidence. In reaching this conclusion, the Director determined that the new evidence did not demonstrate that the Petitioner met the national interest waiver criteria under the *Dhanasar* analytical framework.

Regarding the endeavor's national importance, the Director considered the Petitioner's professional plan and her updated business plan but concluded that neither was sufficient to establish she met this requirement. The Director pointed out that pursuant to *Dhanasar*, in determining whether a proposed endeavor has national importance USCIS focuses on the nature of the proposed endeavor (what the petitioner will be specifically doing), and the Petitioner's professional and business plans referred to various reports and statistics and broader topics related to the industry and occupation rather than her specific undertaking. The Director determined that the Petitioner had not established that her proposed endeavor would have implications beyond her own company and its employees and clients to impact the field, industry, or economy more broadly at a level commensurate with national importance. The Director further explained that while the Petitioner's business plan included forecasts of her mediation company's future projects, sales, and staffing levels, she did not offer corroborating evidence to demonstrate the basis for the projections and did not elucidate how they would be realized. The Director thus determined that the Petitioner did not show her work as a mediator would offer the region or its population a substantial positive economic benefit through employment levels, business activity, investment, or related tax revenue contemplated by *Dhanasar*. The Director concluded that the evidence submitted by the Petitioner was insufficient to establish that providing services to her clients would result in substantial positive economic effects or impact the field of mediation or society at a level commensurate with national importance.

The Director acknowledged the Petitioner's education, training, experience, professional credentials, and achievements, but again explained that those factors alone were not sufficient to demonstrate that she was well-positioned to advance the endeavor, and the record did not show that her work in the mediation field served as an impetus for progress in that field, affected the industry or occupation in some way, generated positive discourse in the broader community, or constituted a track record of success or progress. The Director further noted that the record also did not indicate any interest in the Petitioner's services from potential customers, users, investors, or other relevant entities or individuals, and did not reflect a level of interest in her work from relevant parties sufficient to satisfy

Dhanasar's second prong.

The Director also considered the Petitioner's statements concerning the potential benefits of her mediation services to the United States but found that she had not shown that there was an urgent national interest in her contributions, or that her contributions would be of such value that, overall, they would benefit the nation even if other qualified U.S. workers were available. Thus, the Director concluded that the Petitioner did not meet the *Dhanasar's* third prong.

B. Motion to Reconsider

Although the Petitioner referred to administrative and court decisions in the brief accompanying her motion, she did not explain how they specifically applied to the facts and issues of her case. The Director acknowledged that the Petitioner disagreed with the denial of her Form I-140 but determined that she did not establish that the denial was based on an incorrect application of law or USCIS policy, or that it was incorrect based on the evidence of record at the time, such that it would warrant reconsideration.

C. The Petitioner's Assertions on Appeal

On appeal, the Petitioner references previously provided documentation and case law citations. She also submits evidence that in the period from August to October 2023 she completed additional mediation training and was certified to serve as a mediator in the Florida's Fifth Judicial Circuit, and that in 2021, 2022, and 2023 she received correspondence from the White House thanking her for her outreach on immigration and her "interest in lending [her] time and talents to [the] Administration."

The Petitioner first asserts that the Director improperly found she was ineligible for the benefit sought at the time of filing. We note, however, that the Director's decision on the Petitioner's motion does not contain such a finding. Rather, the Director indicated only that the previously provided evidence that the Petitioner registered her company in November 2022, after she filed her Form I-140, would not be considered, and did not make any findings concerning the Petitioner's eligibility at the time of filing.[5] The Petitioner's assertion, therefore, is not supported by the record and we are unable to meaningfully address it, especially that she does not explain how the fact that she registered her company [redacted] in Florida would have been material to her eligibility for the national interest waiver.

The Petitioner also contends that the Director erred in concluding that she did not present new facts and evidence to establish a proper cause for reopening of her denied Form I-140. However, the record reflects that the Director explained why the new evidence, which consisted of the Petitioner's professional plan and her updated business plan, was insufficient to demonstrate that she met the national interest waiver criteria and, consequently, to overcome the basis for the denial. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). As the Petitioner does not point to any specific errors in the Director's analysis of the

[5] When addressing this evidence in the Form I-140 denial, the Director similarly stated that "USCIS cannot consider any evidence of the [Petitioner's] eligibility after filing Form I-140" but did not conclude that she was ineligible for the benefit sought at the time of filing as a result.

new evidence or the ultimate determination of its insufficiency to overcome the reasons for the Form I-140 denial, she has not demonstrated that the dismissal of her motion to reopen was improper.

Next, the Petitioner states that the Director erred by failing to recognize that alternative resolution represents broadly applicable measures that a wide range of businesses can readily adopt and that her proposed endeavor therefore has national importance. However, the Director explained in both the I-140 denial and the motion decision that in determining whether an endeavor has national importance, we focus on the specific endeavor that the individual proposes to undertake, and evidence of the "potential prospective impact" of the individual's work, rather than the importance of an industry, field, or profession in general. *See Dhanasar*, 26 I&N Dec. at 889. Accordingly, while we recognize that alternative dispute resolution is an important field and mediators provide valuable services to help prevent and resolve a broad spectrum of internal and external conflicts, the Petitioner does not point to any evidence that might show the prospective broad impact of her specific endeavor in the field of mediation and arbitration. Her general statements on appeal that her proposed endeavor "can help alleviate the backlog of cases in immigration courts" and that "Alternative Resolution can give applicants and organizations a greater sense of control and participation in the decision-making, leading to more satisfactory outcomes that better address the underlying interests and concerns of the parties involved," are not sufficient to establish the requisite national importance of her specific proposed endeavor.

Lastly, the Petitioner states that the Director erred in finding that she did not establish the decision to deny her Form I-140 was incorrect based on the evidence in the record at the time, without providing a detailed explanation why the information about the projected economic impact of her proposed endeavor was insufficient. She references previously provided recommendation letters as an example of probative evidence and avers that the Director failed to consider her successful career as an important aspect of her eligibility.

As discussed above, however, the Director did explain the evidentiary deficiencies as they relate to the national waiver criteria.[6] Furthermore, we cannot give the recommendation letters significant weight with respect to *Dhanasar's* first prong, as they do not address the Petitioner's proposed conciliation and mediation project in Florida. For example, two public officials from Brazil attest to the Petitioner's emotional intelligence, legal knowledge, experience, resourcefulness, and accomplishments as a lawyer and mediator. The Petitioner's former employers and clients confirm that she has notable experience in mediation, conciliation and arbitration, and that she carried out her legal obligations as an attorney with celerity and technical expertise well above the average. Although the Petitioner's knowledge, skills, and experience are relevant to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national," they are not probative of whether the endeavor the Petitioner proposes to undertake has the requisite national importance. Here, none of the letters identify or discuss the nature of the specific work the Petitioner will perform within her prospective endeavor in the United States. As such, they are not probative of the Petitioner's eligibility under the first *Dhanasar* prong, and the Director correctly determined that the motion to reconsider did not meet the regulatory requirements under 8 C.F.R. § 103.5(a)(3).

[6] We note that so long as USCIS gives a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the petitioner makes, nor is it necessary for USCIS to address every piece of evidence the petitioner presented. *Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023).

We acknowledge the submission of additional evidence on appeal. However, neither the Petitioner's certification to serve as a mediator in Florida, nor her correspondence exchanges on unrelated topics with the White House are sufficient to show national importance of her specific endeavor.

In sum, the Petitioner has not provided sufficient information and evidence to demonstrate that her endeavor's prospective impact rises to the level of national importance. Specifically, she has not shown that her proposed conciliation and mediation services stand to sufficiently extend beyond her clients to affect the field of alternative dispute resolution more broadly. *Dhanasar*, 26 I&N Dec. at 893. She also has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. *Id.* at 890. Consequently, the Petitioner has not established that her proposed work satisfies the first prong of the *Dhanasar* framework.

Because she is ineligible for the national interest waiver on this basis alone, we need not address at this time whether her endeavor meets the "substantial merit" requirement of the *Dhanasar's* first prong. We also decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs, as evaluating her eligibility under those prongs at this time would not change the outcome. *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 not demonstrated that the additional evidence she submitted in support of her motion to reopen established new facts sufficient to warrant reopening of the proceedings and she did not show that the denial of her Form I-140 was in error as a matter of law or USCIS policy, or that it was otherwise incorrect based on the evidence in the record at the time. The Director therefore properly determined that the Petitioner's combined motion to reopen and reconsider did not satisfy the requirements under the regulations at 8 C.F.R. § 103.5(a)(2)-(3).

ORDER: The appeal is dismissed.