U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31108867

Date: JUNE 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a brand manager, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies as an advanced degree professional, the record did not establish that a waiver of the job offer requirement is 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a 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.

II. ANALYSIS

The Director found that the Petitioner qualifies for the EB-2 classification. Based upon the evidence in the record that the Petitioner obtained the foreign equivalent of bachelor's degree in communications followed by at least five years of progressive experience in public relations and marketing, we agree. *See* 8 C.F.R. § 204.5(k)(2). The issue on appeal is whether the Petitioner has established that she is eligible for and merits a waiver of the job offer requirement, and thus of a labor certification, in the national interest.

The Petitioner's proposed endeavor is to work as an independent digital marketing consultant in the United States. The Petitioner states that her focus will specifically be on helping women business owners and entrepreneurs and that her goal is to "empower entrepreneurial mothers in the [United States] to build profitable businesses and take advantage digital marketing tools to grow their business, increase their income, and benefit the local economy."

The Director concluded that the Petitioner established the substantial merit of the proposed endeavor and that she is well-positioned to advance it. However, the Director found that the Petitioner did not establish the proposed endeavor's national importance or that, on balance, a waiver of the job offer requirement would benefit the United States. In concluding that the Petitioner did not establish the national importance of the proposed endeavor, the Director found that the evidence was insufficient because it did not demonstrate that the proposed endeavor has national or global implications within the digital marketing field or the significant potential to employ U.S. workers or have other substantial positive economic effects.

On appeal, the Petitioner asserts that both the request for evidence (RFE) issued by the Director and the decision did not sufficiently discuss or analyze the evidence in the record. The Petitioner contends that the RFE did not clearly explain the deficiencies in the evidence, did not explain how those deficiencies may be rectified, did not refer to specific evidence in the record, and "in no way allowed the Petitioner to understand and address the issues with the submitted evidence." The Petitioner also contends that both the RFE and the decision "did not contemplate or discuss the totality of the evidence submitted for proving the national importance of the Petitioner's proposed endeavor." The Petitioner states that "federal courts have noted that decisions failing to contemplate or discuss the entirety of the evidence submitted with a petitioner's filing amounts to a critical error in the adjudicative process" and cites to *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mi. 1994).

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

Upon de novo review, we conclude that the Petitioner's claims are not supported by the record. The RFE, although it did not name individual pieces of evidence in the record, did acknowledge, for example, that the Petitioner initially submitted "a personal statement and various articles regarding digital marketing" in an effort to demonstrate national importance. Additionally, the RFE specifically stated the eligibility criteria that had not been met based upon the initial filing and requested in detail the type of additional evidence needed to demonstrate the remaining criteria. The decision also describes the evidence submitted by the Petitioner in the initial filing and in response to the RFE, and the Petitioner does not explain on appeal the specific evidence that she contends was not considered by the Director. The only specific evidence the Petitioner discusses on appeal as demonstrating the endeavor's national importance are the Petitioner's personal statements and the articles and reports submitted to demonstrate "government initiatives and regulations" relating to the proposed endeavor. But the Director did acknowledge that the Petitioner submitted this evidence and concluded that it does not establish the Petitioner's eligibility.

We agree that an adjudicator should consider the relevant evidence in the record. *See* 8 C.F.R. § 103.2(b)(1). However, regarding the Petitioner's reference to *Buletini v. INS*, we note that U.S. district court decisions are not binding precedential authority. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). Additionally, the case to which the Petitioner cites does not stand for the proposition that USCIS must "discuss the entirety of the evidence submitted" in order for a decision or an RFE to be legally sufficient, as the Petitioner claims. Rather, the judge in *Buletini* found the director's failure to "consider the relevant evidence" to be an abuse of discretion. *Buletini v. INS*, 860 F. Supp. at 1233.

We acknowledge that the RFE and the decision do not directly discuss every piece of evidence the Petitioner submitted. However, this is not indicative of a failure to consider the relevant evidence. *See Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention."). *See also Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (joining the Seventh and the Federal Circuit Courts of Appeals in presuming that the Board reviewed all of the evidence of record). Upon de novo review, we conclude that the decision and the record reflect the Director's consideration of the evidence in totality, even though the Director did not discuss each piece of evidence individually. Additionally, we conclude that both the RFE and the decision are sufficient and specific enough to provide the Petitioner a fair opportunity to correct deficiencies in the record and contest the decision and provide the AAO an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

The Petitioner also asserts on appeal that the decision "presents contradictory assessments" of the evidence. Specifically, the Petitioner notes that the RFE states that evidence to establish national importance may include documents demonstrating that the endeavor "impacts a matter that a government entity has described as having national importance or is subject of national initiatives," and claims that the Director "acknowledged that the Petitioner provided numerous government

initiatives and regulations that illustrate the impact of the endeavor on a matter considered nationally important." The Petitioner contends, therefore, that this evidence "must account" for demonstrating national importance and that it is "contradictory and arbitrary" to conclude otherwise.

However, the Petitioner misconstrues both the Director's decision and the relevant legal framework. The Director acknowledged that the Petitioner submitted numerous articles and reports, specifically those relating to women's business ownership and entrepreneurship. But the Director did not conclude that this evidence demonstrates the impact of the proposed endeavor on promoting women in business. Rather, the Director concluded that the relevant question in determining national importance is not the importance of the field, industry, or profession in which an individual will work, but rather "the specific endeavor that [the individual] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner's evidence regarding initiatives from the White House and the Small Business Administration to promote women's business ownership do relate to the Petitioner's proposed endeavor of offering digital marketing services to women business owners. However, these initiatives do not discuss the Petitioner's specific endeavor, do not help demonstrate the potential prospective impact of the endeavor on women's business ownership in the United States, and do not otherwise demonstrate the national importance of the proposed endeavor.

The Petitioner's primary contention on appeal is that the decision does not follow USCIS policy or *Matter of Dhanasar* and that, contrary to the Director's conclusions, the Petitioner did demonstrate the national importance of the endeavor based upon her personal statements and the evidence of related "government initiatives." However, upon de novo review, we agree with the Director that the evidence is insufficient to demonstrate the national importance of the Petitioner's specific endeavor. While the Petitioner's digital marketing services may be beneficial to her clients and their businesses, the record does not demonstrate that the endeavor has the potential to result in a broad impact that would rise to the level of national importance. Any professional or business service has the potential to positively impact its clients and community, and thus the economy and societal welfare in turn; however, the Petitioner has not offered a sufficiently direct connection between her proposed endeavor and any demonstrable economic or societal welfare effects.

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs. *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 is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.