U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31124975

Date: JUNE 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer in the construction 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 Texas 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. 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

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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

A. Advanced Degree Professional

Petitioners may qualify for EB-2 classification as members of the professions holding an advanced degree when they possess a U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty, which is considered the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). The Director determined that the Petitioner qualified for EB-2 classification as an advanced degree professional based on her degree and over five years of progressive work experience in her specialty. The Petitioner submitted copies of her engineering degree and academic transcript from [redacted] which shows she completed six terms of study in three years. A U.S. baccalaureate degree generally requires four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). As a result, the Petitioner has not established that she holds a foreign equivalent to a U.S. baccalaureate degree.

As the Petitioner was not notified of this issue and is otherwise ineligible for a national interest waiver, as we discuss below, we will not reach and reserve the issue of whether she qualifies for EB-2 classification as an advanced degree professional. *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).

B. National Interest Waiver: Substantial Merit and National Importance

In her statements and business plan, the Petitioner described her proposed endeavor as launching a civil engineering and project management consulting company in the construction sector. She stated she would provide specialized services to companies and individuals working in commercial construction, and upon obtaining licensure, would become a general contractor.

The Petitioner subsequently submitted evidence that she established [redacted] in Florida in 2023. The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). As the Petitioner's company was created after her petition was filed in 2022, we cannot consider evidence of her company when assessing her eligibility for a national interest waiver.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of 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.* 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 other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that her proposed endeavor would sufficiently extend beyond individuals she would serve to impact her field more broadly.

On appeal, the Petitioner claims the Director did not evaluate all the evidence under the preponderance of the evidence standard, but instead imposed a "novel standard." The Petitioner does not specify what standard the Director applied. Although the Director did not discuss all the evidence in detail, the Director thoroughly addressed the relevant evidence and explained why it did not establish the national importance of the Petitioner's specific proposed endeavor. When USCIS provides a reasoned consideration of the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *See Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); and *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009).

The Petitioner asserts her proposed endeavor has "the potential of broadly impacting as Civil Engineer and Business Administration and promoting societal welfare," but she does not specify how her company's work would extend beyond individual entities and individuals to promote social welfare on a level of national importance.

The Petitioner submits an article entitled "A Future Worth Building: What Tradeswomen Say about the Change They Need in the Construction Industry," which she claims shows the scarcity of women with her qualifications and level of experience in the construction industry. While this article addresses the work and challenges of women in the construction industry, it does not mention the Petitioner or otherwise indicate any broader implications the Petitioner's proposed endeavor would have within her field. When assessing national importance, we do not focus on issues facing an industry in general. Rather, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

The Petitioner initially submitted numerous support letters from previous employers and colleagues, and evaluations of her qualifications from two professors. The Director acknowledged the letters' praise of the Petitioner's past work and accomplishments, but explained the letters did not address her proposed endeavor or any broader implications of her work in her field. On appeal, the Petitioner submits a letter from [redacted] CEO and Owner of [redacted] Mr. [redacted] describes projects his company has worked on pursuant to a contract with the Petitioner's company, which he credits with "bringing gains in the US economy and workforce." The Petitioner also submits an October 2023 letter from [redacted] Owner of [redacted] who praises the Petitioner's work during their partnership over the last three months. As the Petitioner's work with Mr. [redacted] and Mr. [redacted] commenced in 2023 after the petition was filed in 2022, it cannot be considered in an assessment of the Petitioner's eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49.

In addition, the Petitioner submits a letter from [redacted] CEO of [redacted] Ms. [redacted] praises the Petitioner's past contributions to [redacted] including her recognition as one of the 10 best warehouse employees and as warehouse employee of the month and the Petitioner submits photographs of these awards. Ms. [redacted] describes the Petitioner's promotion to a supervisory position and concludes she "left a legacy for the company." Ms. [redacted] does not discuss any broader implications of the Petitioner's work in her field and does not mention her proposed endeavor.

The Petitioner states she is working on the growth of her company which "can generate benefits for this country: job creation, payment of taxes as Profit increases." In her business plan, the Petitioner stated she would employ one person as an assistant in the first year of establishing her company and would employ up to six people by the fifth year and employ 30 people indirectly. The Petitioner's business plan did not specify how these employment projections were calculated. On appeal, the Petitioner submits bank statements for her company account showing balances between $1,846 and -$21.60. As her company was established and the bank statements are all dated after the petition was filed, they are not indicative of her eligibility at the time of filing. *See id.* The record also does not indicate the Petitioner would operate in an economically depressed area or that her projected employment and tax payments would otherwise provide a substantial positive economic effect of national importance.

The Petitioner further states she intends "to work as a Civil Engineer, General Contractor, Project Management to help to improve the U.S.A. commercial construction sector" and she "will contribute to the national and international interests of the U.S." The Petitioner submits evidence that she failed the examination for a general contractor license but has paid the fees to retake the test. The Petitioner does not specify how her licensure as a general contractor would extend beyond her work with future clients to have national or even global implications, or other broader implications in her field on the level of national importance.

The Petitioner proposes to work with individual entities and the relevant evidence does not demonstrate that her company will have any broader influence on her field. 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. *Dhanasar*, 26 I&N Dec. at 893. Here, the Petitioner has not established that her proposed endeavor stands to sufficiently extend beyond her clientele to impact her field at a level commensurate with national importance.

The Petitioner has not demonstrated that her proposed endeavor has national importance, and she consequently 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. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7 (BIA 2015).

III. CONCLUSION

The Petitioner 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.