U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31284363

Date: JUN. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and as 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that her proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 884.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa 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. Next, a petitioner 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
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

As a preliminary matter, the Petitioner alleges through counsel that the Director "did not objectively evaluate all evidence under the preponderance of evidence standard. Instead, [they] imposed [a] novel standard." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe, 25 I&N Dec. at 375; see also Matter of Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965).* Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See* 1 *USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While counsel asserts on appeal that the Petitioner has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, counsel does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner emphasizes throughout this proceeding that she has more than 24 years of experience in the information technology (IT) field, as well as relating college degrees. She plans to direct and oversee the operations of her company, V-, as its CEO and senior IT consultant. She initially indicated that her company "will provide a comprehensive set of IT consultancy services for each department of an educational institution," noting:

> [V-'s] consulting services will comprise of technology consulting, developing software, implementing technology, teaching clients how to optimize technology use, as well as implementation of more advance students' evaluation. . .. [V-] will devote a part of its budget to digital marketing to drive traffic to its website . . . [and] will participate in trade shows as they allow for the opportunity to speak to and associate with new business contacts.

Later in response to the Director's request for evidence (RFE), she explained that her "proposed endeavor will give educational institutions the potential to effectively attract and engage students

[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 to be discretionary in nature).

[2] As the record demonstrates that the Petitioner is a member of the professions holding an advance degree, her assertion that she is also an individual of exceptional ability is moot.

through using online learning platforms, tailored content, virtual classes, digital assignments, attendance tracking systems, and other technological solutions that she will develop."

Before the Director, the Petitioner submitted a variety of documentation, including evidence of her education and experience, statements describing her proposed endeavor and claimed eligibility for a national interest waiver, a business plan, recommendation and support letters, and an expert opinion letter. She also submitted industry reports and articles, discussing the challenges faced in U.S education systems, the benefits of STEM-related employment and the important role of immigrant entrepreneurs on the U.S. economy.

She suggests, among other things, that the impact of the teaching tools she will develop will extend "far beyond the classroom and into the foundation of the United States' education system," and that through her digital training products her endeavor will "target regionally distressed locations and provide services for underserved communities who may not have as large a budget as areas outside larger metropolitans." Additionally, she contends that her products will improve "math competency and encourage[] students to pursue STEM majors in college and STEM careers upon graduation."

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, they also concluded in part, that the Petitioner had not demonstrated that her proposed endeavor had national importance. On appeal, the Petitioner submits a brief and relies on the evidence submitted to the Director which they reviewed and considered in denying the petition. For the following reasons, we agree that the Petitioner has not established the national importance of her endeavor. While we may not discuss every document in the record, we have reviewed and considered each one.

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 *Dhanasar*, we further 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.

On appeal, the Petitioner points to the evidence in the record about U.S. government initiatives, and the importance of entrepreneurship and STEM employment in the United States, asserting that she "will offer high quality, student tailored, interactive learning solutions." 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 "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. Much of the Petitioner's evidence relates to the importance of digitized learning, STEM employment and entrepreneurship generally, rather than her specific proposed endeavor to our nation. Collectively considering the articles, reports, and statistics, we conclude that they do not sufficiently support a finding that her specific proposed endeavor has national importance.

As noted above, to establish national importance, the Petitioner must demonstrate the proposed endeavor's impact. Although the Petitioner contends that her "adaptive learning methods will have a ripple effect on the educational goals of educational institutions and student performance," and that her endeavor will contribute to the U.S. economy, she has not supported these assertions with sufficient independent, objective evidence. In addressing national importance in the first prong of the framework, the *Dhanasar* decision sets out that the focus is on the specific endeavor being proposed. As such, we do not consider the tenuous, indirect consequences of a petitioner's activity when determining whether it is of national importance. *Id.*

On appeal the Petitioner points to her business plan to support the national importance of her proposed endeavor, referencing her projections for V-'s prospective tax payments and asserts that her company will pay over $82,000 in taxes in in its first year of business and $346,000 in its fifth year. The business plan also suggests that her business will create 28 jobs by the end of year five. But these projections are not sufficiently supported in the record. Additionally, while she indicates that the impact of the learning tools that she will develop and market in the United States will be far reaching, the evidence does not adequately explain how her products differ from or improve upon those readily available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's IT development strategies will reach beyond benefitting her own company and its clients or will have broader implications within the IT field or on her target market - the public sector organizations and private sector entities engaged in delivering services within the U.S. education system.

The Petitioner also provides an expert opinion prepared by Dr. W- of [redacted] who praises the Petitioner's education, experience, past success, personal qualities, and the results she achieved. In his analysis Dr. W- opines: "[The Petitioner] with extensive experience in the Information Technology section, has the capability to render services to companies in the United States," and that her endeavor "impacts a matter that a government entity has described as having national importance or is the subject of national initiatives." However, these qualities relate to the second prong of the *Dhanasar* framework, that the individual is well-positioned to advance their proposed endeavor, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar's* first prong.

Importantly, Dr. W- does not specifically explain how the Petitioner, through her proposed endeavor will have a significant prospective impact on the United States, including the national or global implications of her software products on the U.S. education system, its potential to employ U.S. workers, or through other positive economic effects. The information offered in Dr. [redacted] letter is largely limited to general observations about the Petitioner's qualifications and the occupation and industries in which she will work. He does not offer any analytical roadmap that lays out the basis for his opinion that the Petitioner meets *Dhanasar's* first prong. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). We conclude Dr. [redacted] opinion letter provided lends little probative value to the matter here.

Similarly, the Petitioner has provided reference letters from current and former employers and colleagues who outline her work accomplishments and put forth general statements that assert her services would be beneficial to our country should she immigrate to the United States. Clearly, the

letter writers hold the Petitioner in high regard. However, the submitted do not provide sufficient clarity regarding the specific endeavor that the Petitioner will focus on should this petition be approved. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* Here, the record does not establish that her proposed endeavor stands to substantially impact the field at a level commensurate with national importance. *Dhanasar* at 890.

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver. Because this 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 two remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.