U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31381516

Date: JUNE 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an educational specialist and consultant, seeks classification as an advanced degree professional. 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 that is attached to this EB-2 immigrant 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.

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. Neither statute nor the pertinent regulations define the term "national interest." Rather, *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: (1) the proposed endeavor has both

[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).

substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and, (3) on balance, waiving the job offer requirement would benefit the United States.

The Director determined that the Petitioner qualifies as an advanced degree professional and that the proposed endeavor has substantial merit. However, the Director found that the Petitioner did not establish the national importance of the proposed endeavor or the second or third prongs of the *Dhanasar* analytical framework. The Petitioner's proposed endeavor is to operate an educational consultancy business in Florida, focusing on teacher certifications and trainings to improve educational processes and outcomes.

On appeal, the Petitioner asserts that she has demonstrated her eligibility under each of the three *Dhanasar* prongs. Because, as we discuss below, we conclude that the Petitioner has not demonstrated the national importance of the proposed endeavor, we need not reach the question of whether she has established the second and third *Dhanasar* prongs and we reserve our opinion regarding those issues. *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).

In appealing the Director's findings regarding the national importance of the proposed endeavor, the Petitioner claims that the Director incorrectly stated that the Petitioner's proposed endeavor is to work as an educator. The Petitioner contends that the proposed endeavor is not simply to be an educator but to establish a consulting business that provides teacher trainings and certifications and helps improve educational programs. Additionally, the Petitioner emphasizes on appeal the importance of education, the shortage of qualified teachers in the United States and particularly in Florida, and the Petitioner's plans and goals related to her consultancy business.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon review of the record, we do not find support for the Petitioner's contention that the Director mischaracterized the proposed endeavor. Rather, the decision quotes describes the Petitioner's intention to work as an independent expert and consultant who will provide consultancy services relating to optimizing educational processes, improving the efficiency and quality of educational programs, and training teachers. Additionally, we agree with the Director that record does not establish the proposed endeavor's national importance. In support of the endeavor's national importance, the Petitioner emphasizes the importance of education and the problem of teacher shortages in the United States. But in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* at 889. The evidence does not establish that the Petitioner's specific proposed endeavor—to establish a consultancy business—has the potential to impact the issue of teacher shortages or improve

the educational system at a level commensurate with national importance. The record also lacks sufficient evidence to establish the claimed positive economic benefits of the proposed endeavor.

Although the Director noted these deficiencies in the decision, on appeal the Petitioner repeats the same claims presented to the Director about the importance of education, the issue of teacher shortages in the United States, and the impact that her business's services will have on its clients. The Petitioner does not address or attempt to overcome the findings of the Director that these claims do not establish the importance of the specific, proposed endeavor. Moreover, the Petitioner does not identify any other specific legal or factual errors in the Director's findings that the Petitioner did not establish the national importance of the endeavor.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the second and third *Dhanasar* prongs but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25 (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).

ORDER: The appeal is dismissed.