U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30538731

Date: JUN. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 required job offer, and thus that the labor certification, would be 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 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. Once a petitioner demonstrates eligibility for the underlying classification, 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 the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (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

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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. at 889.

The Director summarized the evidence and analyzed why it did not establish the Petitioner's eligibility for a national interest waiver. In so doing, the Director addressed the occupational demand and shortage of professionals in the STEM fields, the claimed ripple effects of her endeavor, her current role and duties at [redacted] the reference letters she provided, among other topics. We adopt and affirm the Director's decision regarding the Petitioner's eligibility under the first *Dhanasar* prong. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner submits a brief, reasserting her eligibility and contends the Director's decision contained errors of fact and law. In support, she relies upon the evidence and arguments previously provided and emphasizes that her employment at [redacted] is critical to the success of numerous research projects and educational initiatives, which align with national priorities related to "various scientific fields, including clean energy, environmental sustainability, and technology development . . . [and that] [redacted] research often results in commercial ventures, which . . . stimulate economic growth and job creation."[2]

The Petitioner's endeavor is described in a "Petition Letter," and "Professional Plan," both dated in September 2022.[3] The Petitioner explains that her endeavor is to "work in critical positions servicing [the energy, manufacturing, technology, oil and gas, and education] industries [as a maintenance/asset integrity engineer or consultant]." She describes her expertise in the fields of maintenance management, asset integrity, project management, and engineering, and the typical activities associated with these positions, and her intention to use her "15+ years of engineering work experience within asset integrity and maintenance management together with [her] academic background in order to develop advanced technologies and a unique methodology to be used by multinational corporations, government agencies, and institutes of technology to improve and integrate asset integrity analysis, equipment reliability, maintenance management systems and compliance activities." As such, the Petitioner's evidence does not reflect that her endeavor is to continue in her current role at [redacted] *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (standing for the proposition that any inconsistencies in a petitioner's evidence may lead to reevaluation of the remaining evidence offered in support of the visa petition). We note that even if the Petitioner's endeavor were described as continuing to work at [redacted] in her current role, the nature of her duties is too remote from the research and innovation she contends her work advances. *See Matter of*

[2] We note that the Petitioner's appeal brief refers to her as a "production engineer," whereas the Petitioner's statements reflect she is an asset integrity, equipment reliability, and maintenance engineer. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (standing for the proposition that any inconsistencies in a petitioner's evidence may lead to reevaluation of the remaining evidence offered in support of the visa petition.)

[3] While our decision may not reference every document the Petitioner submitted, we have reviewed each one.

Chawathe, 25 I&N Dec. at 375-76. For example, she has not shown how the actual duties she performs at [redacted] create jobs or promote innovation at a level commensurate with national importance. *Id.*

The Petitioner also contends the Director's decision "expressed reservations" regarding the expert opinion letter provided by an adjunct professor at [redacted] The Director analyzed this evidence and correctly assessed its evidentiary weight in regard to the Petitioner's burden citing to *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) for the proposition that USCIS may, in our discretion, use opinion statements submitted by a petitioner as advisory but, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that opinion. Moreover, we agree with the Director's analysis that the opinion letter did not provide a meaningful analysis of the "broader implications or the potential prospective economic impact" of the proposed endeavor. As such, the Petitioner has not shown how the Director's treatment of this opinion is reversible error.[4]

As stated, we adopt and affirm the Director's decision regarding the Petitioner's eligibility under the first *Dhanasar* prong.[5]

ORDER: The appeal is dismissed.

[4] In May 2024, our office issued a request for additional evidence and a notice of intent to deny the petition, to which the Petitioner timely responded. The Petitioner's response sufficiently addressed our concerns with respect to her receipt of an award at [redacted] as well as the reference letters she submitted. As such, these issues are considered resolved.

[5] Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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).