U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 312612210

Date: JUNE 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an IT project manager, seeks employment-based second preference (EB-2) immigrant classification 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 the record did not establish that the Petitioner was an individual of exceptional ability and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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

To qualify for a national interest waiver, a petitioner must first show eligibility 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting

[1] The Petitioner initially claimed she also qualifies for EB-2 classification as a member of the professions holding an advanced degree. The Director requested additional evidence relating to this claim in a request for evidence (RFE). However, the Petitioner did not address it in response to the RFE or on appeal. As the Petitioner has abandoned that claim, we will not address it here. *Matter of F-C-S-*, 28 I&N Dec. 788, 789 n.3, 791 n.6 (BIA 2024) (finding issues not challenged on appeal are abandoned or waived).

[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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,[4] 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

A. Exceptional Ability

In the decision, the Director concluded that the Petitioner met three of the six evidentiary criteria, official academic records, more than ten years of full-time experience, and membership in professional associations, at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (E). Upon review of the evidence its totality, the Director determined that the Petitioner had not established that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Upon review, we disagree with the Director's conclusion that the Petitioner meets the membership in professional associations criterion and withdraw the determination to the contrary. The regulation at 8 C.F.R. § 204.5(k)(2) defines a "profession" as an occupation listed at section 101(a)(32) of the Act, 8 U.S.C. §1101(a)(32),[5] or an occupation whose minimum requirement for entry is a U.S. baccalaureate degree or its foreign equivalent.

In support of the criterion, the Petitioner relies on her Project Management Institute (PMI) membership and union membership with the Sindicato dos Tecnólogos do Estado de São Paulo (SINTESP). However, without evidence, such as the membership requirements, which demonstrates that either association requires a minimum of a bachelor's degree for membership, we cannot conclude that PMI and SINTESP are *professional* associations consistent with the regulatory definition at 8 C.F.R. § 204.5(k)(2). Therefore, the Petitioner has not established eligibility for this criterion.

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[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[4] *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).

[5] The occupations listed in this section are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

The Petitioner has had a successful career in the field of IT project management in Brazil. But the record does not establish that she meets at least three of the evidentiary criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(A) through (F). Since the Petitioner did not satisfy the initial evidence requirements, we need not conduct a final merits analysis to determine whether the evidence in its totality shows that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

Because the Petitioner has not established eligibility for the underlying EB-2 classification, the petition is not approvable on this basis alone.

B. National Interest Waiver

The Petitioner's proposed endeavor is to continue to work as an IT project manager. She stated that she "proposes to work with American companies with the implementation of Technology projects and processes interacting with different teams for improvement, reduction and/or simplification of processes and compliance with Resolutions" and that "[t]his will make companies more efficient which in turn will help them save money and contribute to their growth, directly impacting the local economy. In response to the Director's request for evidence, the Petitioner submitted two job offer letters from potential employers seeking to employ her as an IT project manager.

The Director determined that the Petitioner's proposed endeavor did not have substantial merit or national importance. However, evidence in the record establishes that the Petitioner's proposed endeavor has substantial merit, and we withdraw the Director's determination to the contrary.

Turning to the national importance of her proposed endeavor, the Petitioner contends that her proposed endeavor has national importance "because of its potential to foster substantial enhancements in business efficiencies and economic growth," which the Director overlooked. She asserts that her proposed endeavor "embodies significant national and global importance by driving technological innovation in the financial sector, creating jobs, enhancing societal welfare, and reinforcing the U.S.'s position as a leader in financial services technology."

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 determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An 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 889-890.

Upon review, the Petitioner has not established how the project management services she intends to provide to future employer(s) in the United States would have broader implications in the IT industry. She broadly states on appeal that she will "significantly reduce operational costs and increase the agility of financial transactions," and that "the ripple effect of her work is expected to contribute to societal welfare by making financial services more accessible and user-friendly." She also states that her "work has the potential to set new benchmarks in financial technology that can be emulated by

businesses worldwide." But the record does not explain and provide adequate support to demonstrate how her proposed endeavor would help businesses worldwide or impact the financial services technology field at a national level. 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. *Id.* at 893. Here, the Petitioner has similarly not established that her proposed endeavor stands to sufficiently extend beyond her future employer(s). Nor has she demonstrated that her work as an IT project manager would broadly enhance societal welfare at a level commensurate with national importance.

In addition, the Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. While the Petitioner claims that her proposed endeavor will "foster substantial enhancements in business efficiencies and economic growth," she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Moreover, although the Petitioner asserts that her endeavor will "create new job opportunities within the IT sector," she does not clarify how many and has not offered sufficient evidence that her endeavor would result in substantial economic benefits through employment levels, tax revenue, or business activity.

The Petitioner also notes that her proposed endeavor aligns with national initiatives, including the American Technology Council and Small Business Administration. However, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *Id.* at 889. Instead, when determining whether the proposed endeavor has national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* Thus, while we acknowledge that the financial services technology industry is important, this fact is insufficient to establish the national importance of her proposed endeavor.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs, and we hereby reserve them.[6] The burden of proof is on the Petitioner to establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible).