U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31522431

Date: JUN. 24, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner had not established eligibility for the underlying immigrant classification and 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.[1]

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, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[2] grant a national interest waiver if:

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[1] The Petitioner filed her national interest waiver on January 28, 2020. After issuing a request for evidence (RFE), the Director denied the waiver on August 20, 2021. On March 14, 2022, we withdrew the Director's conclusion that the Petitioner had established that they were an advanced degree professional or an individual of exceptional ability. We remanded the matter to the Director to determine if the Petitioner qualified for EB-2 classification, and if she provided sufficient and consistent information regarding her proposed endeavor such that the Director may determine whether a waiver of the required job officer, and thus of the labor certification, would be in the national interest. Upon remand, the Director issued an RFE on October 17, 2023. On December 12, 2023, the Director denied the waiver, thus prompting this appeal.

[2] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At the initial filing, the Petitioner indicated that they intended to work in the occupation of "Education Administrator" and indicated their proposed job title as "Education Administrator." The Petitioner included a "Professional Plan and Statement" which indicated that the Petitioner intended to continue working as an education administrator.

In response to the Director's request for evidence, the Petitioner amended the endeavor by stating, "my overall proposed endeavor in the U.S. is to work as an entrepreneur within the field of education." The Petitioner submitted an updated plan where she stated that she intended to open at least three businesses based in the education sector, including one or more physical language schools, an exchange company offering consulting services to foreign public and private schools who want to bring in their students for tourism and English immersion in the United States, and a third business that outsources foreign language teachers to public and private schools.

On appeal, the Petitioner argues that the Director did not apply the preponderance of the evidence standard and asserts that "the adjudicating officer should not alter the regulations and impose stricter standard of proof." We disagree with the Petitioner's characterization.

The Director did not find that the Petitioner was a professional holding an advanced degree. On appeal the Petitioner argues that she earned a bachelor's degree in Letters from [redacted] in May 2021. She earned a Specialization in Brazilian Literature and the Construction of Text from [redacted] in June 2005, and in September 2006, a Specialization in School Management, Supervision, and Guidance. She notes that she has been licensed by the state of California's Commission on Teachers Credentialing since August 2020, she has taken various additional courses, and has further advanced her career and education in the field by becoming a member of the several professional associations. She further argues that during her more than 22 years of experience as an "Education Administrator and Entrepreneur" she served in positions of increasing professional responsibility and sophistication, and that the record contained letters from different employers verifying the Petitioner's progressive post-baccalaureate experience. However, the Director meticulously reviewed the documentation and determined that the Petitioner submitted evidence of a "Titulo de Licenciado em Letras" after a course of study from 1998 to 2000, and according to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE), "[t]he 2- to 3-year Titulo de Licenciado (Licenciatura) represents attainment of a level of education comparable to 2 to 3 years of university study in the United States." Further, the AACRAO indicates that Lato sensu graduate programs lead to professional certificates, not to graduate degrees. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 244 (Comm. 1977).

Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

Consequently, the Petitioner did not establish that she had the U.S. equivalent of a baccalaureate degree or a foreign master's degree or higher. The Petitioner's employment letters did not establish at least five years of progressive experience in the specialty of education administration, or evidence of five years' experience as an entrepreneur. Specifically, the Petitioner is currently a part-time high school teacher in foreign language as of August 2020, but the various positions she held prior to the time she filed her waiver in January 2020, do not show full-time work in the specialty of education administration.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit[3] but not its national importance. As it relates to substantial merit, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner argues the national importance of her proposed endeavor and maintains that her proposed endeavor is to work as an education administrator and entrepreneur. On appeal, the Petitioner explains that, "[s]he has over 22 years of experience working in academic and educational services, specifically literature with a focus on writing composition. She also has experience in personnel management, strategic planning, team building, and structuring academic environments." Specifically, the brief claims, "[t]he endeavor proposed by the [Petitioner] relies on developing study centers, [redacted] in the state of California. Each center will provide qualified care, combined with educational enrichment, and other development activities to those enrolled. It will entail a modern and welcoming environment for children from 6 weeks to 12 years old, powered by teams of talented educators." Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). Moreover, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Comm. 1971).

In 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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of owning and operating three businesses in the education sector in California. In *Dhanasar*, we 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.

Moreover, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work.

[3] In her brief, the Petitioner erroneously claims that the Director determined that her proposed endeavor is not of substantial merit.

Dhanasar, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how her business and services largely influence the field and rise to the level of national importance. Similar to this case, in *Dhanasar*, we determined 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. The record does not show through supporting documentation how her particular endeavor sufficiently extends beyond her prospective clients in California, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show how her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. The Petitioner's business plan presented before the Director indicated that her endeavor would involve a $200,000.00 initial investment, but as the Director pointed out, it was not clear how the Petitioner arrived at that approximation and whether it would adequately cover the Petitioner's endeavor to open three businesses. Moreover, the Petitioner did not show how her endeavor would utilize a significant population of workers in the area, would substantially impact job creation, or provide other economic effects. In addition, on appeal, although the Petitioner now claims that "[t]he company is set to impact the education industry with an estimated total payment of wages of approximately 1.6 million dollars in the first five years of operations, in the state of California," even if credible, the Petitioner did not establish the benefits to the regional or national economy would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*, 26 I&N Dec. at 890. For all these reasons, the record does not establish that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4]

As the Petitioner has not shown that she qualifies for the underlying immigrant classification, nor has she met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[4] *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); *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 applicants do not otherwise meet their burden of proof).