U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31508079

Date: JUN. 25, 2024

Appeal of Texas 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 Texas Service Center denied the petition, concluding that the Petitioner had not established 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 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.

I. LAW

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 matter of discretion,[1] grant a national interest waiver if:

- 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

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. The Petitioner intends to establish "a mixed used grocery store where fresh healthy staple goods will be offered along with fresh daily cooked meals prepared within the grocery store kitchen." She states her endeavor will be an essential service and "contribute towards healthy food accessibility, eliminate food insecurities and fill food gaps to those who are less advantaged individuals, families and communities" and that in addition to selling food at her business, she will sell it through cooperation with delivery services, employ and train local individuals, and offer cooking classes.

On appeal, the Petitioner asserts that the Director mistakenly conflated her intended employment as a Director of Operations with her proposed endeavor, which "carries broader implications that extend beyond the specific nature of the intended work." However, the record reflects that the Director properly assessed the Petitioner's proposed endeavor, noting that she intends to "utilize her skills and experience to improve access to affordable and fresh healthy food and eliminate food insecurities to those who are less advantaged individuals, families and communities and those who live in food deserts" and that she would do so through her work in food service at her business. Furthermore, we have considered the case de novo and agree with the Director that the Petitioner has not demonstrated the national importance of her proposed endeavor.

As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner established the substantial merit, but not the national importance, of the proposed endeavor.

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.

Although the Petitioner provided articles on food insecurity, food deserts in the United States, the importance of access to healthy food and its connection to American obesity, and efforts in the United States to improve and finance food access,[2] the matter here is not whether these issues are nationally important. Rather, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of opening a mixed use grocery store selling "fresh healthy staple goods" and "fresh daily cooked meals," beginning in [redacted] Georgia and later expanding to other cities. Likewise, her submission of market research reports about the supermarket and grocery store industry do not establish the national importance of her particular professional services or business.[3]

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

[2] Although we may not discuss every document submitted, we have reviewed and considered each one.

[3] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than its national importance.

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.

The Petitioner stresses her "extensive experience" and "skills set for essential service." However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner submits letters of support, recommendations, and positive feedback from former professors, colleagues, and customers. The letters discuss the Petitioner's particular skills, experience, and services, including her university education, work in human resources and employee training for a grocery store chain, and ownership and operation of a restaurant. However, the letters do not show the broader impact of the Petitioner's work beyond that to her specific employers and customers. While the writer of one letter, a human resources official, discusses food deserts and states that the Petitioner has the skills to train workers so that they can access higher wages, the source of his knowledge about the Petitioner or her specific endeavor is not clear. Moreover, the letters[4] cover the Petitioner's prior work and accomplishments and relate more to the second prong rather than the first prong of the *Dhanasar* framework. *Id.* at 890.

On appeal, the Petitioner disputes the Director's statement that the letter writers did not "provide specific examples of how the petitioner influences the field or industry beyond adding to the general pool of knowledge" or demonstrate a record of success in the field. The Petitioner correctly notes that whether her work has influenced her field of endeavor and has a record of success relates to whether she is well-positioned to advance that endeavor, not to the endeavor's national importance. However, the Director's use of this language was harmless, as the Petitioner still has not submitted sufficient evidence to meet her burden of showing that her proposed endeavor is nationally important, and we need not reach whether she is well-positioned to advance it.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner did not demonstrate how her business would largely influence the field and rise to the level of national importance. 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 the Petitioner's endeavor of operating a mixed use grocery store sufficiently extends beyond her prospective customers and employees to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, while she provided a business plan for the proposed company, the Petitioner did not present sufficient supporting evidence corroborating the assertions and figures. Moreover, the Petitioner did not demonstrate how her business plan's claimed revenue and employment projections, even if

[4] We also note that the resumes accompanying several of the letters are written in the same format despite allegedly reflecting the professional and educational experience of different individuals.

credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner submitted a business plan which discusses her two existing businesses – a café and a prepared food company – and explains her intention to "redirect" the café from a "quick service restaurant" to a "mixed use grocery store that includes freshly cooked meals and fresh grocery staples" and to continue operating the prepared food company as a "meal packaging company selling prepared meals" to grocery stores and wholesalers. Although the business plan forecasts total sales of $780,000 in the first year and $2,168,517 by the fifth year, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the business plan claims the creation of 25 jobs in year one and 71 jobs by the end of year five, with payroll expenses totaling $1,338,894 in the fifth year, the Petitioner did not demonstrate the relevance of these numbers and show that such future staffing levels would provide substantial economic benefits to the regions in which she intends to focus[5] or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not demonstrate 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 the 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 the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[6]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, the Petitioner has not demonstrated she is eligible 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.

[5] The Petitioner states she plans to open three stores over the course of the first five years, beginning in [redacted] Georgia and then expanding to Hawaii and "the Southern States." In another portion of the business plan, she reiterates her intention to establish three locations in the first five years but also states she will focus on Georgia, Hawaii, Texas, Alabama, and Florida during that time period.

[6] *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).