U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31491338

Date: JUN. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nutritionist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 had not shown that a waiver of the required job offer, and thus of the labor certification, would be in the national interest because the record did not establish that the Petitioner proposed endeavor has national importance or that, on balance, it would be beneficial to the United States to waive the job offer and labor certification requirements. 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 qualify for a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification under section 203(b)(2)(A) of the Act, 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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,[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
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ADVANCED DEGREE

The Director found the Petitioner established she qualifies as a member of the professions holding an advanced degree as required for EB-2 classification. Specifically, the Director determined the Petitioner submitted a copy of a diploma certifying completion of a bachelor's degree and employment documents establishing she had, at a minimum, five years of progressive and post-baccalaureate experience in the specialty.

The record contains a foreign equivalent of a bachelor's degree for the Petitioner in nutrition. The Petitioner also submitted a Lato Sensu course certification in business administration. The Petitioner does not assert this certification is the foreign equivalent of an academic or professional degree above a bachelor's degree. Rather, the Petitioner submitted an academic evaluation that equates this certification to only half a year of graduate-level study in business administration. As such, the Petitioner did not demonstrate she holds a qualifying degree above a bachelor's degree that would constitute an advanced degree. 8 C.F.R. § 204.5(k)(2). Instead, the Petitioner sought to establish she is an advanced degree professional based on her bachelor's degree and five years of progressive experience in the specialty. *Id.* In support, the Petitioner submitted a resume listing nutritionist work experience ranging from March 2010 to December 2011, February 2012 to May 2014, and May 2014 to November 2018. The Petitioner also submitted employment contracts, letters from various colleagues, and an employer letter attesting to her work for [redacted] in nutrition from February 2014 to May 2018, a span of approximately four years and three months. However, evidence of post-baccalaureate progressive work experience must be in the form of letters from current or former employers and encompass at least five years. *See* 8 C.F.R. § 204.5(k)(3)(i)(B). Here, the Petitioner has not submitted letters from her employers that encompasses a total of five years of progressive post-baccalaureate experience in the degree specialty. In addition, the submitted employee letters do not include the name, address, and title of the writer of the letter or a specific description of the duties performed by the Petitioner, as required under the regulations. Accordingly, the Petitioner has not established herself as an advanced degree professional, and the Director's finding on her eligibility for the underlying EB-2 visa classification is withdrawn.

The Petitioner has not asserted that she alternatively qualifies for the underlying EB-2 immigrant classification as an individual of exceptional ability in the sciences, arts, or business.

[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).

III. NATIONAL INTEREST WAIVER

The Petitioner proposes to start a new company, [redacted] to provide nutrition counseling and consulting services in [redacted] Florida. The Petitioner believes her education in nutrition and business administration coupled with her nutrition work experience equips her to teach clients about nutrition and compliance with health regulations. [redacted] intends to work with individual clients, including children, seniors, and pregnant women; hospitals; schools, and other establishments to develop healthy dietary habits for the U.S. population. The Petitioner plans to create a multidisciplinary team at [redacted] to detect and mitigate malnutrition and support behavioral and lifestyle changes.

A. Substantial Merit and National Importance

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. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner established the substantial merit aspect, the initial half of the first prong.

However, the Petitioner has not submitted sufficient evidence demonstrating the proposed endeavor is of national importance. The Director determined the Petitioner did not establish her endeavor would have a broader impact on the field of nutrition or that its benefits to the economy would rise to the level of substantial positive economic effects.

On appeal, the Petitioner asserts the Director erred in failing to consider the potential impact of her endeavor rather than its geographical breadth, including her planned employment of U.S. workers. Our review discloses no such error. The Director has properly considered whether the proposed endeavor has sufficiently broad potential implications on the field to establish national importance. *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. Amongst other evidence, the Petitioner resubmits her business plan for [redacted] which reflects intentions to employ 17 individuals by its fifth year in business, at a payroll expense exceeding one million dollars. The Petitioner asserts her proposed endeavor will create financial bridges and prompt economic development in the nation's economy. However, the Petitioner did not provide supporting evidence corroborating these employment figures and general assertions. Further, the Petitioner did not meet her burden of demonstrating how her projections, even if credible and plausible, result in benefits to the regional or national economy to the level of "substantial positive economic effects," as contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner further asserts that since nutrition sciences is a field considered part of science, technology, engineering, or mathematics (STEM), her proposed endeavor fosters progress in a STEM field. In support of this assertion, the Petitioner submitted below a DHS STEM Designated Degree Program List including the degree of "Nutrition Sciences." The Petitioner contends the Director did not properly consider the inclusion of nutrition sciences in a national initiative or the growing demand for nutrition professionals in the future. However, a shortage of worker occupations or skills does not

render the Petitioner's proposed endeavor nationally important under the *Dhanasar* framework. *Id.* Rather, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. In addition, even if the Petitioner's endeavor lays within a STEM field, the evidence must still demonstrate this endeavor has both substantial merit and national importance. *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *Id.* On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *Id.* Here, the Petitioner has not shown that her proposed endeavor to provide her professional services to individual clients within a STEM profession aims to advance STEM technologies and research or has sufficiently broad implications for the field to demonstrate its national importance. *Id.*

The Petitioner contends unhealthy diets are causing multitudes of health problems in the United States, including obesity, and submits supporting documentation for this contention. The Petitioner claims her vision for [redacted] has national importance as it would provide a solution for unhealthy eating and promote well-being in the population at large. Overall, the Petitioner asserts her proposed endeavor is unique in the field due to her education and years of varied experience in nutrition. The Petitioner states her extensive work experience demonstrates her ability to adapt and excel, qualities she would bring to the field on nutrition in the United States. However, these assertions regarding the Petitioner's education, skills, and expertise relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. But here, the issue is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong. In addition, while we do not question the importance of the nutrition industry, we focus on the specific endeavor the petitioner proposed to undertake. *See id.* at 889. Here, for the aforementioned reasons, the evidence is not sufficient to show the Petitioner's endeavor is of national importance.

B. Additional Prongs

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. *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). Here, the Director found the Petitioner established she is well-positioned to advance her proposed endeavor, in satisfaction of the second *Dhanasar* prong. Our de novo review of the record does not appear to support this finding; we will reserve this issue and not further consider the Petitioner's eligibility under this or the third prong as our determinations that the Petitioner did not establish he has an advanced degree and did not otherwise satisfy the first *Dhanasar* prong are dispositive of this appeal.

IV. CONCLUSION

As the Petitioner has not demonstrated eligibility for the underlying immigrant classification and has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner 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.