U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37287753

Date: MARCH 6, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a ballet teacher and director, 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 that the Petitioner did not qualify for EB-2 classification and did not establish 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit 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 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;

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

- 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. ANALYSIS

The Petitioner submitted a business plan to establish [redacted] a limited liability company (LLC) in [redacted] Georgia. The business plan indicates the Petitioner would be the sole owner of the company and head dance teacher. The business plan states the company will operate a dance studio that will "train professionals capable of entering the entertainment industry as theater, dance and musical theater performers, while at the same time fostering sociability, well-being and health through arts education."

A. EB-2 Classification

The Director determined the Petitioner was not eligible for EB-2 classification as an individual of exceptional ability. As the Petitioner is not eligible for a national interest waiver for the reasons discussed below, we do not reach and hereby reserve our determination of her eligibility for EB-2 classification. *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).

B. National Interest Waiver: Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner did not submit sufficient evidence of her proposed endeavor to show it has substantial merit. We disagree. The Petitioner submitted a detailed business plan of her proposed endeavor that shows it has substantial merit in business and culture.

The Director also concluded the Petitioner did not establish the national importance of her proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or other broader implications indicating national importance. *Id.* at 889-90.

On appeal, the Petitioner asserts her company has national importance because it will offer programs that enhance public health through dance thereby addressing national concerns related to chronic illness management, mental health, and the well-being of aging populations. The Petitioner does not explain and does not submit evidence that these benefits would extend beyond her company's students to impact public health more broadly on a level commensurate with national importance.

The Petitioner also claims her company has national importance because it will focus on inclusive dance programs for individuals with physical and mental disabilities thereby promoting social equity and accessibility. Again, the Petitioner does not demonstrate and does not submit evidence that these benefits would extend beyond the program participants to impact these social issues more broadly in a manner commensurate with national importance.

The Petitioner further asserts her company has national importance given its economic impact. The Petitioner claims by employing dance instructors and staff, her company will contribute to the economic growth of the [redacted] area and potentially beyond as the business expands. The business plan projects that the company will employ 4 people the first year, increasing to 22 in the fifth year. The business plan forecasts the company will earn a net profit of $50,784 the first year, increasing to $105,626 in the fifth year. The Petitioner did not submit evidence that the employment of up to 22 people and a net profit of up to $105,626 is significantly high in the dance industry and indicative of national importance. The Petitioner also states her company will support "economically disadvantaged communities," but she did not submit evidence that Atlanta is an economically depressed area or that her company would operate in other such areas.

The Petitioner also claims her company will fill a significant gap in the job market by providing employment opportunities for performing arts and dance education professionals. As discussed, the Petitioner has not established that up to 22 jobs represents significantly high employment in the dance industry at a level indicative of national importance.

The Petitioner further asserts her company will contribute to building a more cohesive and resilient society through educational programs and cultural events. The Petitioner did not explain or submit evidence of how her company's programs and events would extend beyond its students and audiences to impact her field or the country more broadly in a manner commensurate with national importance.

The Petitioner also claims her company "is the object of interest and support from government entities and national initiatives aimed at promoting the arts, education, and economic development." The Petitioner submitted no evidence of government entities that have pledged support for her company or national initiatives that directly involve her company.

The Petitioner's business plan states the company will offer a range of classes in classical ballet, jazz, contemporary dance, musical theater, drama, cardio dance, and power ballet. The business plan also explains the company's programs will be inclusive, providing tailored support for neurodivergent children and accommodating speakers of other languages. The business plan states the company will also produce shows and audiovisual products. The record does not indicate, however, that any of these offerings are unique or innovative in the dance industry or would otherwise have national or even global implications. *See id.* at 889. (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field).

The Petitioner submitted support letters from colleagues and past employers who praise her skills and accomplishments, express belief in her ability to succeed in the future, but do not address her proposed

endeavor. For example, A-P-S-[2] expresses her belief that the Petitioner "can add immense value to dance in the U.S. and can be an invaluable resource for culture in general." P-H-S-R- expresses his belief that the Petitioner will "do an exemplary job wherever she is." P-L-A- describes the Petitioner as "a woman with great knowledge, and fully able to perform her duties wherever she is, she will undoubtedly be extremely significant to all those who pass through her hands." V-R- attests to the Petitioner's "ability and professional quality" and states she "always gave her best to make the children feel inspired and joyous through the art she visibly carries." M-I-M expresses her belief that the Petitioner "will be able to collaborate in a substantial way for the development of dance and related areas that make use of body/physical work in the United States of America, collaborating to improve the physical condition and health of the population." J-L-O- praises the Petitioner's professionalism, dedication, and creative and leadership skills and expresses confidence she will "contribute to art education and the entertainment industry in the United States of America." While they attest to the Petitioner's skills and successful past work, none of these individuals discuss her proposed endeavor. S-D-S- even indicates the Petitioner would engage in other work as he states his church has "the intention to have her in a position to lead an art department globally in our institution in order to be in charge of creating and directing new productions."

The Petitioner also submitted a letter from S-Q-, Director of [redacted] expressing her opinion that the Petitioner qualifies for a national interest waiver. S-Q- states the Petitioner's company has significant potential to employ U.S. workers because it will employ 22 people directly and create an additional 88 indirect jobs. S-Q- does not show that these projected employment figures are significantly high in the dance industry. S-Q- opines the Petitioner's company will have other substantial positive economic effects by stimulating local economic activity by supporting ancillary businesses such as restaurants, hotels, and transportation services, but does not provide any projected figures of such economic activity. S-Q- also predicts the company will reduce healthcare costs and improve overall productivity for its participants, but does not establish that any such benefits would extend beyond the company's clientele to have a substantial positive economic effect commensurate with national importance.

S-Q- further states the Petitioner's company will broadly enhance societal welfare by promoting social justice through its scholarships for low-income individuals and specialized programs for individuals with disabilities, but does not demonstrate that any such benefits would extend to a number of individuals so large as to indicate national importance. S-Q- also claims the Petitioner's company aligns with key initiatives in the United States such as the National Endowment for the Arts' Creativity Connects initiative and the goals of the Americans with Disabilities Act. However, merely working in an area of national interest does not establish the national importance of a specific proposed endeavor. The assessment of national importance does not focus on the importance of national institutions or issues in the field, but rather "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.*

In sum, the record does not establish that the Petitioner's proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within her field, or has other broader

[2] We use initials to protect the privacy of the referenced individuals.

implications indicating national importance. Consequently, the Petitioner has not demonstrated that her proposed endeavor has national importance and she does not meet the first *Dhanasar* prong.

C. The Remaining *Dhanasar* Prongs

As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of her eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not established the national importance of her proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, she has not demonstrated that she is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.