U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30339776

Date: MAR. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a communications specialist, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 qualified for classification as a member of the professions holding an advanced degree, but that she 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, a petitioner must first 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

With the initial filing, the Petitioner submitted her personal statement declaring that "I am petitioning to work in the United States as a Communications Specialist for [redacted] [a multinational software company]" and her attorney's letter indicating that she will "help with the growth of [redacted] market and customer reach within the United States and beyond." The Petitioner's initial description of the proposed endeavor does not provide any other details beyond her intention to continue working as a communications specialist for her current employer.[2] The Petitioner also submitted industry reports and articles discussing the career in public relations and communications in general and recommendation letters from her work colleagues at [redacted] all of which did not specifically address her endeavor and its broad impact as contemplated by *Dhanasar*. Hence, the Director determined that the Petitioner has not demonstrated that "the work being done would stand to benefit anyone outside of [redacted] and its potential clientele" and issued a request for evidence (RFE) asking for additional documentation to support that her endeavor has national importance.

In response to the RFE, the Petitioner submitted a new personal statement reiterating her intent to work "in the United States as a Communications Specialist, developing and executing highly specialized communication strategies that align with the organization's objectives, thus promoting success and growth." The Petitioner also stated that [redacted] offered her a position as a full-time sustainability communications specialist and modified the description of her endeavor as follows:

> As a Sustainability Communications Specialist, I will be specifically responsible for developing and executing communication strategies that promote sustainable practices and environmental responsibility, which is extremely important in today's world. I will work closely with stakeholders to promote sustainable practices, share information about environmental initiatives, and create a culture of sustainability within the organization.

With the RFE response, the Petitioner provided three expert opinion letters from [redacted] an assistant professor in the department of journalism and media communication at [redacted] an assistant professor of marketing, organization behavior,

[2] The Petitioner's resume indicates that she worked as a corporate communications intern for [redacted] Latin America & Caribbean division and later joined the [redacted] sales team as a marketing and communications content creator intern.

and leadership management at [redacted] and [redacted] a business administration student mentor at [redacted] The Petitioner also included an article entitled, "Sustainability Communications in the Era of Green Marketing," a set of presentation slides on sustainability communications, and a job offer letter from [redacted] However, the Director denied the petition, concluding that the Petitioner's endeavor has substantial merit but not national importance under the first prong of the *Dhanasar*'s analytical framework.[3] We agree with the Director's decision.

On appeal, the Petitioner claims that the Director "abused its discretion" by "ignoring the objective opinion of three independent experts in the Petitioner's field without disqualifying them." However, the Director provided a detailed analysis of Professor [redacted] expert opinion letter, how it discussed the industry in general rather than the Petitioner's specific proposed endeavor and how it lacked persuasive details in directly tying the Petitioner's endeavor to a broad impact to the field or substantial economic effects. The Director made similar conclusions regarding the other expert letters. Although the Petitioner contends that these letters "should have played an extremely relevant role in establishing the national importance of [the Petitioner's] endeavor, which they all agreed had been established," the advisory opinions are of little probative value as they do not meaningfully address the details of the proposed endeavor. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory but will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

The Petitioner also contends that the Director "erroneously applied a higher standard of proof to make this Decision, having failed to consider the totality of the evidence provided." With respect to the standard of proof in this matter, a petitioner must 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 375-76. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, we find that the Director weighed all the evidence to evaluate whether the Petitioner had demonstrated, by a preponderance of the evidence, that she meets the first prong of the *Dhanasar* framework but determined that the evidence overall lacked probative value.

The Director also reviewed the job offer letter from [redacted] and the duties of a sustainability communications specialist but concluded that "the duties listed appear to be central to the company itself, and there is no evidence that the benefits the beneficiary will bring in this company will have broad implications extending outside of the company and its clients." Although the Petitioner claimed that she will work on a project "dedicated to developing unique and personalized Strategic Communications for Plans for American companies," she has not discussed how her project and methodologies differ from or improve upon those already available and in use in the United States, as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Dhanasar*, 26 I&N Dec. at 889. The record includes a set of presentation slides discussing general action items for increasing external

[3] The Director further concluded that the Petitioner is well-positioned to advance her proposed endeavor under the second prong, but the evidence does not support that the endeavor, on the balance, would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification, under the third prong.

and internal communications for sustainability, but the Petitioner does provide any context or background for this presentation for us to evaluate how her project will have a broad impact in the field. Moreover, the three expert letters do not reference this specific presentation or analyze the uniqueness of such project.

The Petitioner further contends that "USCIS appears to have overlooked the extensive probative research." The Petitioner submitted various articles and reports on the communications industry and the importance of sustainability-focused communications, but in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Although the Petitioner claims that her work as a sustainability communications specialist is "an issue of national and even global importance," we focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." *Id.* These industry reports provide background on the communications career and its importance; however, they do not provide any specific information about the Petitioner's proposed endeavor and are insufficient to establish national importance of the endeavor.

Similarly, the Petitioner's recommendation letters from her work colleagues indicate the high regard for her work and skills but do not discuss the Petitioner's proposed endeavor or its specific impact rising to the level of national importance. We acknowledge that the Petitioner provided valuable communications services for her employer in the past, but she has not offered sufficient information and evidence to demonstrate her endeavor's national importance. 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.

Moreover, the Petitioner has not established that her work would be on such a large scale that would benefit the U.S. economy rising to the level of national importance. The Petitioner generally claims that communication specialists will bring "a ripple effect on broader society and the national economy, impacting the United States as a whole" but has not supported her claims with pertinent evidence showing that the individual work as a communications specialist at one specific company will generate substantial revenue or employment in a particular region or in economically depressed areas, as contemplated by *Dhanasar*. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Considering the record in its entirety, we conclude that the Petitioner does not adequately describe or demonstrate how her future work a sustainability communications specialist rises to the level of having national importance within the field. The record does not show that the specific work the Petitioner proposes to undertake will offer original innovations to advance the industry, or that it otherwise has wider implications in the field. The evidence did not sufficiently articulate how her particular proposed endeavor would have national importance beyond her current employer and its clients.

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's arguments regarding her eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that the Petitioner has not established eligibility for 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.