U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30113832

Date: MAR. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an ordained minister, a musician, and a piano player, 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 record did not establish that the Petitioner's proposed endeavor has national importance and that that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. The matter is now before us on appeal. 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.

"Advanced degree" means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

"Profession" means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),[1] as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

"Exceptional ability" in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. We will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[3]

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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[4] 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.

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. *Dhanasar*, 26 I&N Dec. at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are

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[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[4] *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 is discretionary in nature).

available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factors considered must, taken together, establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Petitioner proposed to work in the United States as a religious education director and a pastor and start a musical church in [redacted], Pennsylvania.

A. EB-2 Visa Classification

As indicated above, the 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. *See* Section 203(b)(2)(B)(i) of the Act. The Petitioner claimed eligibility for the EB-2 visa classification as an advanced degree professional. The Director determined that the Petitioner qualifies for the EB-2 visa classification as an advanced degree professional because she possesses a foreign equivalent degree of a bachelor's degree in the United States. However, the record does not show that the Petitioner has five years of progressive experience in the specialty sought by the Petitioner. *See* 8 C.F.R. § 204.5(k)(2).

The Petitioner presented her diploma and transcript from the [redacted] named after [redacted] in Uzbekistan, which shows that she completed her studies in piano from 2007 to 2010 at the music college and received a diploma in piano in 2010. A credential evaluation report prepared by Virtuoso Evaluations indicates that the diploma from the music college is equivalent of an associate of arts in music granted by an accredited university in the United States.

The Petitioner also presented her diploma, certificate, and transcript from [redacted] which shows that she completed her biblical studies at the university from 2017 to 2022 and received a certificate in biblical studies and a diploma in biblical and theological studies in 2022. The record shows that the Petitioner possesses a U.S. baccalaureate degree in biblical and theological studies.

The Petitioner provided a certificate from the chairman of [redacted] which states that the Petitioner worked as an administrator at Society of Social Mutual Assistance for People with Disabilities [redacted] from 2014 to 2016, a period of three years. This certificate does not show that the Petitioner has progressive experience in the specialty after obtaining her bachelor's degree in 2022. The regulation at 8 C.F.R. § 204.5(k)(2) states that a U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. Therefore, 8 C.F.R. § 204.5(k)(2) requires a petitioner to have the five years of progressive experience after obtaining a bachelor's degree.

Although the Petitioner holds a U.S. baccalaureate degree, she has not established that she has five years of progressive experience in the specialty after obtaining her bachelor's degree in 2022.

Accordingly, she is not eligible for the EB-2 visa classification as a member of the professions holding an advanced degree.

At the time of filing her petition, the Petitioner did not claim eligibility for the EB-2 visa classification as an individual of exceptional ability. On appeal, the Petitioner does not claim eligibility for the EB-2 visa classification as an individual of exceptional ability and does not present supporting evidence. Therefore, we need not reach a decision on whether the Petitioner is eligible for the EB-2 visa classification as an individual of exceptional ability, and we will reserve this issue for future consideration should the need arise.[5]

B. National Interest Waiver

The Director determined that the Petitioner's proposed endeavor to work as a religious director and a pastor has substantial merit and that the Petitioner is well positioned to advance the proposed endeavor. But the Director determined that the evidence did not sufficiently demonstrate that the Petitioner's proposed endeavor has national importance and that, on balance, it would be beneficial to the United State to waive the requirements of a job offer, and thus of a labor certification.

On appeal, the Petitioner contends that her proposed endeavor is of national importance and that she presents benefits to the United States through her proposed endeavor that outweigh those inherent in the labor certification process.

The Petitioner asserts that her proposed endeavor to work as a religious leader and a pastor in the United States has significant potential to employ U.S. workers and support the local workforce because she will hire an administrative assistant who will manage the church's daily operations and an accountant who will handle financial tasks for the church. To support this claim, the Petitioner provides summary on secretaries and administrative assistants, a job posting for a church administrative assistant at a church in California, employment and wage statistics for religious workers in the United States, and the beginner's guide to accounting for churches from various websites.

While the submitted documents provide general information about secretaries and administrative assistants, basic information about accounting for churches, and employment and wage statistics for religious workers in the United States, they do not demonstrate how hiring an administrative assistant and an accountant will offer substantial positive economic effects for our nation. The Petitioner has not offered sufficient evidence that her church would employ a significant population of workers in an economically depressed area or that her endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increase in the church's revenue attributable to her services as a religious leader and a pastor stands to substantially affect economic activity regionally or nationally. In *Dhanasar*, we stated that an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for

[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible).

instance, may well be understood to have national importance. *See Dhanasar*, 26 I&N Dec. at 890.

In addition, the Petitioner asserts that her proposed endeavor as a religious director will broadly enhance societal welfare because she plans to establish a food bank, organize food drives, or partner with local organizations to distribute food to those in need in the community. The Petitioner further states that by preventing food waste and ensuring that nutritious food stays within the community instead of ending up in landfills, her proposed endeavor will make a significant impact on the environment and the well-being of individuals facing food insecurity. To support this claim, the Petitioner submits information about the United States Department of Agriculture's emergency food assistance program, an article about reducing wasted food by feeding hungry people, a report that discusses the significant role faith-based nonprofit institutions play in promoting the health and well-being of their communities through food, articles about food insecurity and hunger, and an article about food security, chronic disease, and health among adults, and a report on the contributions of faith-based organizations in community development.

These articles and reports support that food assistance programs provided by the U.S. government, churches, or other faith-based organizations reduce food waste and promote the health and well-being of individuals facing food insecurity. However, the Petitioner has not shown how her proposed endeavor to establish a food bank or organize food drives and distribute food to those in need in the community would make a significant impact on the environment more broadly or on the health and well-being of the U.S. population more broadly rather than benefiting those in need in the community and who will be served by the Petitioner's church. In *Dhanasar*, we indicated that we look for broader implications of the proposed endeavor and that an undertaking may have national importance, for example, because it has national or even global implications within a particular field. *See id.* at 889.

The Petitioner further claims that her proposed endeavor as a church director will help women recover from physical, emotional, or sexual abuse or alcohol or drug addictions because she plans to establish a faith-based recovery center. She adds that she will create a support system that will help Americans navigate the challenges of recovery through support groups, mentorship programs, and peer support network. She states that she can secure funding to support the recovery center's operations by partnering with the Substance Abuse and Mental Health Services Administration (SAMHSA), a government agency in the United States that is dedicated to advancing behavioral health, and assessing grants. She contends that this proposed endeavor will benefit individuals struggling with addictions, alleviate the burden on government resources, and contribute to the overall economic well-being of the country. The Petitioner asserts that her proposed endeavor in helping Americans suffering from drug and substance abuse is of national importance because it aligns with the SAMHSA's faith-based and community initiatives and because drug and substance abuse in America is a widespread issue that affects people from all walks of life. To support this claim, the Petitioner provides a study on substance abuse, religion, and spirituality, drug abuse statistics in the United States, Tennessee's faith-based initiatives to address drug addictions in the state, and an article about a faith-based addiction treatment program.

While these study and articles provide the benefits of a faith-based addiction treatment program, the Petitioner has not provided sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rises to the level of national importance. We acknowledge that drug and substance abuse is a widespread serious issue in the United States and that religion and spirituality

play a powerful role in preventing and treating substance abuse and maintaining sobriety. However, 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 id.* As such, the Petitioner must demonstrate by a preponderance of the evidence that her proposed endeavor to establish a faith-based recovery center and help women recover from physical, emotional, or sexual abuse or alcohol or drug addictions is of national importance. The Petitioner has not shown that her proposed endeavor would impact the mental health industry more broadly or would provide a solution to the current drug and substance abuse problems in the United States rather than benefiting her patients or clients who will be served by her recovery center. Unfortunately, without sufficient documentary evidence of its broader impact, the Petitioner's proposed work does not meet the national importance element of the first prong of the *Dhanasar* framework.

Because the documentation in the record does not sufficiently demonstrate the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not established eligibility for a national interest waiver. Therefore, further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, would serve no meaningful purpose, and we will reserve these issues for future consideration should the need arise.[6]

III. CONCLUSION

The Petitioner has not demonstrated 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. Moreover, the Petitioner has not established by a preponderance of the evidence that, as a matter of discretion, she is eligible for or otherwise merits a national interest waiver because she has not shown that her proposed endeavor is of national importance.

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.

[6] *See INS v. Bagamasbad*, 429 U.S. at 25 ("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. at 526 n.7 (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).