U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30136179

Date: MAR. 26, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is a director of tourism for [redacted] an office of [redacted] Ministry of Commerce, Industry, and Tourism. She seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for: (1) classification as an individual of exceptional ability, and (2) the national interest waiver. The matter is now before us on appeal under 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, 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 EB-2 eligibility, 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 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).

- 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.

II. ANALYSIS

Since 2007, the Petitioner has worked for [redacted] In 2012, she began working in the United States as an A-2 nonimmigrant employee of a foreign government, first as a senior specialist at [redacted] office, and then, starting in 2016, as director of tourism at its [redacted] office.

We will dismiss the appeal because the Petitioner has not met the requirements for the national interest waiver. Because this issue is, by itself, sufficient to determine the outcome of the appeal, we will reserve argument on the separate question of whether the Petitioner has established eligibility as a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, the arts, or business.[2]

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the substantial merit and national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The first *Dhanasar* 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. We look for broader implications. 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 instance, may well be understood to have national importance. *Id.* at 889-890.

The Petitioner must establish the substantial merit and national importance of the specific proposed endeavor; it cannot suffice for the Petitioner to establish the overall importance of a particular subject, occupation, or field. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See, generally,* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

In denying the petition, the Director stated that the Petitioner had not provided enough details about the proposed endeavor to establish its substantial merit. We agree, as explained below.

The Petitioner initially indicated that her proposed endeavor is "to continue her service to the cruise industry in the [redacted] The Petitioner's initial submission included what

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

she called "evidence of the substantial merit and national importance of international tourism, maritime security, and the cruise industry in particular." These terms, however, do not describe the Petitioner's specific proposed endeavor. Similarly, an exhibit list submitted with the petition identifies various reports about aspects of the cruise industry, under the heading: "The person seeks employment in an area of substantial merit and national importance." The first prong of the *Dhanasar* framework requires each petitioner to establish the substantial merit and national importance of the individual's specific proposed endeavor, rather than the broad "area" in which the individual intends to work.

In a request for evidence (RFE), the Director noted the Petitioner's apparent intention "to continue to work for [redacted] but the Director stated that the Petitioner "did not provide a detailed description of [her] proposed undertaking or venture."

In response to the RFE, the Petitioner offered a more vague description, stating her intention to work "in the cruise industry and the tourism sector at large . . . in the U.S. public or private sector, eventually transitioning to a permanent position related to tourism." The Petitioner stated that she wishes to continue to influence "policy design" and to "work with . . . multilateral organizations" such as the U.S. Agency for International Development and the Pan American Development Foundation, but she did not explain how she would be in a position to do so. Her revised description of her proposed endeavor includes no mention of [redacted] except in the context of her past experience.

In the denial notice, the Director concluded that the Petitioner had not provided sufficient details about the proposed endeavor to establish its substantial merit. On appeal, the Petitioner states that the Director does not appear to have considered that she "has already been employed for several years in the United States." The Petitioner's past employment, however, does not suffice to create an inference as to her intended future employment, and the specifics of her proposed endeavor.

The record is ambiguous as to whether the Petitioner's proposed endeavor would involve continued employment with [redacted] In a recommendation letter, the executive director of [redacted] U.S. office praised the Petitioner's past work, but instead of indicating that the Petitioner would continue to work at [redacted] the official stated that the Petitioner should have "the opportunity to contribute to the US tourism sector."

The Petitioner asserts that she "provided a detailed description of her proposed endeavor in the RFE response." But while the RFE response statement described a number of *goals*, she did not provide a detailed description of what she would do to realize those goals. Instead, she offered the vague and open-ended statement that she seeks employment "in the U.S. public or private sector, eventually transitioning to a permanent position related to tourism." This general statement potentially encompasses a wide range of possible occupations, none of which the Petitioner specifically identified.

We agree with the Director that the Petitioner has not described her proposed endeavor in sufficient detail to meet her burden of proof to establish the substantial merit of that proposed endeavor.

Turning to national importance, the Director stated, in the RFE: "In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work," but rather "the specific endeavor that the foreign national proposes to undertake." The Director stated that the Petitioner had "not explained what [her] specific undertaking in the United States" would be.

In response to the RFE, the Petitioner submitted statistics about "the travel industry," but the Petitioner's proposed endeavor would not encompass the entire industry. The overall importance of tourism and travel does not establish the national importance of one specific endeavor within the industry.

The Petitioner also discussed the benefits of sustainable tourism. This information is more specific than statistics about the entire tourism industry, but the Petitioner did not sufficiently explain how her proposed endeavor would relate to sustainability efforts.

The Director denied the petition, stating that the submitted background materials "speak in broad terms and do not reflect the national importance the petitioner's specific endeavor would have." The Director also stated that, without more details about the Petitioner's intended employment, "USCIS is unable to determine if the petitioner's contribution would have an impact on a local level, and/or if her endeavor would have an impact of U.S. national importance."

On appeal, the Petitioner states that she showed that her proposed endeavor "rises to a level of national importance due to the impact it will have in the field of tourism from economic, cultural, social, environmental, and security perspectives." The discussion that follows, however, focuses on general statistics and discussion of the Petitioner's past employment with [redacted] Discussion of the Petitioner's *past* work might be relevant to the second *Dhanasar* prong, relating to whether she is well positioned to advance the proposed endeavor, but her work history does not tell us what that endeavor would be, and whether that specific endeavor would have national importance.

In terms of future plans, the Petitioner discussed aspirations such as "furthering the goals of sustainable tourism" but did not explain how her proposed endeavor would achieve those aims. As noted above, the Petitioner's discussion of the proposed endeavor did not detail any specific employment plans or even differentiate between the "public or private sector."

As discussed above, the Petitioner has not provided a consistent and detailed description of what her proposed endeavor would entail. Without that information, we cannot conclude that the Petitioner has met her burden of proof to establish the national importance of her specific future endeavor.

In light of the above conclusions, the Petitioner has not met her burden of proof to show that she satisfies the first prong of the *Dhanasar* national interest test. Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the second and third prongs.

III. CONCLUSION

The Petitioner has not provided enough information and evidence to identify a specific proposed endeavor and establish its substantial merit and national importance. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.