U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37316705

Date: MAR. 28, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a foreign language and literature teacher and entrepreneur in the field of education, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 although the Petitioner qualified as an advanced degree professional, she did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

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,[2] grant a national interest waiver if the petitioner demonstrates that:

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[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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).

[2] *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 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.

The Petitioner proposed to establish an education center in [redacted], New Jersey that will provide bilingual education using American Sign Language (ASL) and Brazilian Sign Language (Libras), as well as English and Portuguese. In addition, the Petitioner stated that her company "will offer comprehensive services including educator training and certification, interpretation, educational material development, accessibility consulting, inclusion and awareness programs, and family support services."

The Director determined the Petitioner's proposed endeavor was of substantial merit, and we agree. However, the Director concluded the Petitioner did not establish that her proposed endeavor had national importance.

On appeal, the Petitioner asserts her company "holds national importance due to its focus on addressing critical, systemic challenges faced by the deaf and hard-of-hearing community across the United States." She also claims that the "shortage of certified ASL interpreters is a pressing national issue, affecting access to essential services like healthcare, education, and legal assistance" and that "[b]y expanding interpreter training and certification programs, the academy helps fill this gap, providing a solution that is scalable across the country." In support, the Petitioner resubmits her business plan and recommendation letters, as well as new articles regarding the importance of the various technologies used to assist the deaf community and the dangers of linguistic neglect.

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.

We reviewed the Petitioner's business plan, which states that the company intends to employ 37 employees, pay over $2.6 million in payroll expenses, and generate a net profit of over $1.9 million by its fifth year. Importantly however, these employment and revenue projections are not supported by details showing their basis, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Here, the record does not support that the creation of 37 additional jobs in this sector or the expected revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

Moreover, we also reviewed the letters of recommendation from her colleagues. The authors of the letters praise the Petitioner's abilities working with the deaf community and her personal attributes, indicating that she would be an asset in the United States. However, the letters of recommendation do

not offer persuasive detail concerning the impact of her proposed endeavor and how it would extend beyond her students.

While we have reviewed the articles, they focus on the importance of the field and not the Petitioner's specific endeavor of establishing an education center. When determining national importance, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

Finally, we also acknowledge the Petitioner's contention that her proposed endeavor has national importance due to the shortage of ASL interpreters. However, the Petitioner has not established that her proposed endeavor will create jobs in a manner that will stand to significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs, and we hereby reserve them. *See INS v. Bagamasbad,* 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. The burden of proof is on the Petitioner to 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 375-376. The Petitioner has not done so here and, therefore, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.