U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30376564

Date: MAR. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a special education teacher, seeks classification as a member of the professions holding an advanced degree. *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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Texas Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion[1], grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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 first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Petitioner, a special education teacher, seeks to open a special education support office in Florida where she will provide psychopedagogical support, offer consultancy on adapting materials for special education, and deliver lectures on education for children with special needs. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

[1] *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 to be discretionary in nature).

The Director issued a request for evidence (RFE) requesting, among other things, further evidence of how the proposed endeavor would be of national importance. In response, the Petitioner provided additional documents including recommendation letters, letter of intent, job offer letters, course curriculum, and industry reports. In denying the petition, the Director concluded that although Petitioner's proposed endeavor has substantial merit, the Petitioner did not establish the national importance of her endeavor. The Director also determined that the Petitioner did not establish her proposed endeavor has broader implications, has significant potential to employ U.S. workers, and that it would broadly enhance societal welfare or cultural or artistic enrichment. Furthermore, the Director found that the Petitioner did not provide sufficient evidence to confirm whether her proposed endeavor will have substantial positive economic effects, particularly in an economically depressed area as contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner contends that the Director blatantly misinterpreted and misread her proposed endeavor by referencing "a systems and computer engineering" industry in the Director's decision. Though the Petitioner is correct, we find the error to have been a harmless one because, as will be discussed, the Petitioner has not sufficiently demonstrated her proposed endeavor's national importance under the *Dhanasar* analytical framework's first prong by a preponderance of the evidence.

On appeal, the Petitioner maintains that her proposed endeavor is of national importance because her endeavor will have several positive economic and societal impacts. The Petitioner highlights the evidence submitted in support of the petition and in response to the RFE to underscore the sufficiency of the submitted evidence and maintains that she submitted evidence to demonstrate the proposed endeavor's national importance. The Petitioner submits letters indicating interest in investing in her work and company as well as job offer letters from two separate companies proposing to hire the Petitioner: one offering her a position as a registered behavior technician and the other offering her a position as a special education teacher.

The Petitioner also submits a letter of intent from a professor in the departments of pediatrics and cellular & molecular medicine at the [redacted] The professor expresses the interest of [redacted] a nonprofit laboratory at the department of pediatrics, in partnering with the Petitioner in pursuit of her proposed endeavor. The professor explains that he supports the Petitioner's application as a special education teacher and business owner. However, the letter does not specify the types of services that the Petitioner will provide to the nonprofit as a special education teacher and business owner.

The author of the expert opinion letter submitted by the Petitioner in support of her petition emphasizes the Petitioner's extensive experience as an educator and underscores the significance of education, particularly for children with special needs. The author proclaims that the Petitioner's proposed endeavor will generate direct job opportunities and is a matter that a government entity has described as having national importance. In addition, the record includes various industry reports including articles discussing special education services in the United States, the challenges students with autism face in classrooms, and government initiatives aimed at enhancing services for children with

intellectual disabilities. The record therefore demonstrates that the Petitioner's proposed endeavor aimed at teaching students with special needs has substantial merit.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner's business plan reflects her intention to operate a business that aims to provide special education services, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of 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. Here, the record does not include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a special educator offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

Though we acknowledge the Petitioner's assertions and the evidence she submitted in support of her petition, we conclude that the Petitioner has not shown her proposed endeavor stands to sufficiently extend its benefits beyond her immediate students and customers to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that her specific endeavor has national importance under *Dhanasar's* first prong. The Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. While the Petitioner projects that her proposed endeavor will offer 610 jobs per year for special education teachers and garner a net revenue of $260,201.60 in year one and $413,936 in year five, she has not presented evidence indicating that the benefits to the regional or national economies resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

While the Petitioner also asserts that her company will generate job opportunities across various sectors, thereby contributing to the country's economy, she has not demonstrated that her undertaking has implications beyond the students under her tutelage and her customers. Nor has the Petitioner shown that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the country. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not indicate that the benefits to the regional or national economy resulting from the Petitioner's teaching activities would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the *Dhanasar* analytical framework's requisite first prong, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.