U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37821430

Date: MAY. 02, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a music instructor and musician, 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).

SCOPS denied the petition, concluding that while the Petitioner established eligibility for the EB-2 classification, the record did not demonstrate the Petitioner's eligibility for the requested national interest waiver. 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. 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).

Once a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 matter of discretion[1], 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.

Id.

II. ANALYSIS

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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the Petitioner's proposed endeavor, aiming to improve the representation of diverse identities in orchestral music, has substantial merit. However, while the Petitioner established that the proposed endeavor has substantial merit, the record does not show it has national importance.

To increase the representation of diverse identities in orchestral music, the Petitioner intends to amplify the voices of black, latinx, and female identifying composers by showcasing local and under-represented composers. She also intends to perform, instruct and research music to advance her proposed endeavor of increasing the representation of diverse groups in orchestral music. The Petitioner is a teaching artist at a children's orchestra as well as an instructor for private students, and she disseminates her pedagogical research by speaking at conferences and she performs as a cellist and a vocalist.

On appeal, the Petitioner asserts that the Director erred in concluding that the Petitioner did not establish the national importance of her endeavor. Specifically, the Petitioner contends that the Director failed to identify the endeavor, did not consider the totality of the evidence submitted, leading to an inaccurate analysis of the national importance prong, and that on the balance it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. The Petitioner contends that the record contains sufficient documentation, and that the information provided in the initial petition and in the request for additional evidence (RFE) establish the endeavor's national importance. The Petitioner relies on the assertions previously put forth before the Director but notably does not discuss the evidence in the record with specificity, nor does she explain how it supports her claims or otherwise overcomes the conclusions regarding the limited prospective impact of her endeavor. Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).

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

The Petitioner contends that her endeavor is nationally important and that it will have "life changing impacts with children in her school district." While we acknowledge the importance of music education, the Petitioner does not provide support for the assertion that her work will be life changing. Further, 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 "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner's statements reflect her intention to provide valuable services to students and those accessing her music and research, she has not provided 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. *Dhanasar* at 893. Here too, while we acknowledge that as the Petitioner asserts that she "enriches the lives of young students and breaks down racial disparities by providing an authentic opportunity to experience the joys and benefits of music, while learning to play an instrument", she has not shown how her proposed endeavor stands to sufficiently extend beyond her students to lead to "national or even global implications" to the music field more broadly at a level commensurate with national importance. *Id.* at 889. Likewise, we recognize that the Petitioner's endeavor of disseminating research through presentations at organizations such as [redacted] performing, and showcasing underrepresented groups will bring important sociocultural value to the United States, but she does not establish how these activities would have a broad impact consistent with national importance.

Although the Petitioner submitted articles regarding the value of music education titled "Children and Music: Benefits of Music in Child Development," "The Argument for Music Education," and "Here's what's missing in music education: Cultural and social relevance", the matter here is not whether these, as well as music instruction, research and performance or similarly related subjects, are nationally important. Rather, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her services as an educator, artist and researcher through her endeavor.

The record also contains information regarding the shortages of teachers in Louisiana. Specifically, "Teacher shortages have gotten worse. Here's how schools are coping" "Baton Rouge schools face worsening teacher shortage" and "Louisiana's teacher shortage: School leaders identify problems and solutions" However, the alleged shortage of occupations or occupational skills does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Responding to the RFE, the Petitioner maintains that letters of support from a [redacted] and professional cellist demonstrate the national importance of the proposed endeavor. While the letters opine on the potential benefits of the Petitioner's research, performance, educational efforts, and efforts to increase diversity in the orchestral music field, the letters do not explain how these activities have broader implications for our country. The letters repeat the same arguments addressed above pertaining to the importance of various topics and subjects without showing the wider effect in the field of the Petitioner's particular proposed endeavor.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[2]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion

ORDER: The appeal is dismissed.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 applicants do not otherwise meet their burden of proof).