U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31070695

Date: MAY 07, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical technician, seeks second preference immigrant classification (EB-2) as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director also concluded that the Petitioner qualified for the EB-2 classification as a member of the professions holding an advanced degree and did not analyze whether she qualified as an individual of exceptional ability. 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 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.

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 (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:

[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 in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

Upon de novo review, we will dismiss the appeal because the Petitioner did not establish that her specific proposed endeavor has national importance and thus, she did not satisfy the first prong of *Dhanasar* framework. As the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs or the Petitioner's qualification for the EB-2 classification as an advanced degree professional.[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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).

In addressing the issue of national importance, the Director acknowledged the Petitioner's submission of a business plan discussing her endeavor to operate her own company, [redacted] and provide consulting services on electrical energy management. However, the Director highlighted the lack of objective evidence to support the staffing projections and figures proposed in the business plan as well as the limited impact of the endeavor. In doing so, the Director determined that the Petitioner did not provide evidence that her specific proposed endeavor would result in substantial U.S. economic impact or job creation or that it would broadly enhance societal welfare. *See Dhanasar*, 26 I&N Dec. at 890.

The Director also acknowledged the Petitioner's submission of various articles discussing the importance of energy efficiency, governmental priorities on the energy industry, the shortage of STEM professionals, and the value of entrepreneurial endeavors. However, the Director pointed out that in evaluating the national importance aspect of the *Dhanasar*'s first prong, we focus on the Petitioner's specific endeavor, rather than the field or profession. *Id.* at 889. Here, the Director determined that the Petitioner has not "provided a sufficiently direct connect between her proposed endeavor and any national initiatives."

On appeal, the Petitioner submits a brief that generally reiterates the benefits of her profession, her qualifications, and the claimed economic impacts of her proposed business and contends that she has established the national importance of her proposed endeavor. She does not, however, provide any new evidence or arguments to overcome the Director's determination or identify any specific instances of errors on the part of the Director.

[2] Although the Director concluded the Petitioner demonstrated that she is an advanced degree professional, the record does not contain academic credential evaluations to show that any of her vocational or technical degrees from Brazil (such as "Titulo de Tecnólogo" degree in oil and gas, "Curso Técnico" in secretarial studies, or "Curso Técnico" in electrotechnics) is equivalent of a U.S. bachelor's degree. Also, in her initial filing, the Petitioner only presented documents qualifying her as an individual of exceptional ability, not as a member of the professions holding an advanced degree.

Accordingly, we adopt and affirm the Director's analysis and decision regarding the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS,* 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS,* 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). As the Petitioner has not met the *Dhanasar*'s first prong, we conclude that she has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.