U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30992694

Date: MAY 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a massage therapist, seeks classification as an individual of exceptional ability. 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is an individual of exceptional ability or that a waiver of the job offer requirement is in the national interest. 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.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either a member of the professions holding an advanced degree 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 an advanced degree professional or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 a 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.

II. ANALYSIS

The Director found that the Petitioner did not establish that she is an individual of exceptional ability and as such did not establish that she qualifies for the EB-2 classification.[2] Regarding the Petitioner's request for a national interest waiver, the Director found that the Petitioner demonstrated the substantial merit of the proposed endeavor but not its national importance, that she is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States. The Petitioner's proposed endeavor is to operate a spa offering massage therapy services in Florida.

On appeal, the Petitioner asserts that she qualifies as an individual of exceptional ability and that she has demonstrated her eligibility for a national interest waiver under each of the three *Dhanasar* prongs. Because, as we discuss below, we conclude that the Petitioner has not demonstrated the national importance of the proposed endeavor, we need not reach the question of whether she qualifies for the EB-2 classification or has established the second and third *Dhanasar* prongs and we reserve our opinion regarding those issues. *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).

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director stated that USCIS focuses on the specific endeavor that the individual proposes to undertake, rather than the importance of the field, industry, or occupation. The Director found that although massage therapy may improve patients' health and have benefits regarding productivity in the workplace, the Petitioner did not establish how her specific endeavor has broader implications within the field of massage therapy as claimed or how the claimed benefits will rise to the level of national importance. The Director also discussed Petitioner's claims regarding the economic benefits of the proposed endeavor, including those in the impact analysis report, and concluded that these claims were not sufficiently supported by independent evidence in the record.

In appealing the Director's findings regarding the national importance of the endeavor, the Petitioner primarily repeats the same claims presented to the Director in response to the request for evidence (RFE). The Petitioner contends that massage therapy can help control health problems, reduce stress, reduce chronic pain, and overall improve well-being, thereby reducing healthcare spending, reducing the need for sick and disability pay, improving worker productivity, and positively impacting the economy. The Petitioner also asserts that the business will employ U.S. workers, earn revenue, and pay income taxes and therefore provide benefits to the U.S. economy.

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

[2] The Petitioner does not claim to qualify for the EB-2 classification as an advanced degree professional.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon de novo review, we agree with the Director that the record does not establish the proposed endeavor's national importance. We agree that, in determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. Additionally, we agree with the Director that the Petitioner's assertions regarding the claimed economic benefits of the proposed endeavor are not sufficiently supported by evidence.

Although the Director noted these deficiencies in the decision, on appeal the Petitioner restates the claims that the economic benefits and the benefits of massage therapy as a field demonstrate the national importance of the endeavor. The Petitioner does not address or attempt to overcome the findings of the Director that these claims do not establish the importance of the specific, proposed endeavor. Moreover, the Petitioner does not identify any specific legal or factual errors in the Director's findings that the Petitioner did not establish national importance.

The Petitioner contends that the proposed endeavor to work as a massage therapist will "reduce government spending," "contribute to the strengthening of the productive capacity and economy of the country," and "further grow the United States economy." However, these claims are not supported by the evidence in the record. Although the evidence demonstrates that the Petitioner is an experienced massage therapist and that she intends to establish a massage therapy business, the record does not demonstrate that the potential prospective impact of this endeavor includes improving the health and well-being of the U.S. population, or the U.S. economy, at a level commensurate with national importance.

In *Dhanasar* we concluded that STEM teaching has substantial merit in relation to U.S. educational interests, but that the petitioner had not demonstrated that the activities of one individual STEM teacher would impact the education field more broadly. *Id.* at 893. The same is true here. The Petitioner has not established that the benefits of her proposed endeavor will extend beyond her own patients or employees to impact the massage therapy field or the U.S. economy more broadly.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to her qualification as an individual of exceptional ability and the second and third *Dhanasar* prongs but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the Petitioner's EB-2 eligibility or the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25 (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 alternative issues on appeal where the applicant is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.