U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31200892

Date: MAY 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources and business development manager, 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. §el153(b)(2).e

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement 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.

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:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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 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 determined that the Petitioner was a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner is the owner, manager and employee of [redacted] her family's telecommunications and energy company in Ecuador. She began working in human resources in 2015 and is now the company's human resources and business development manager.

The Petitioner states that her proposed endeavor is to expand her family's business in the United States to operate [redacted], a Florida-based business, as a human resources and business development manager. She asserts that the U.S. company will:

- Manage administrative processes for the business;
- Open a warehouse to manage a purchasing department for specific equipment and machinery for export to Latin America, as well as for storage to support operations in the United States, and;
- Use expertise on renewable and clean energy to install, repair, maintain and relocate photovoltaic system operations.

With the initial filing the Petitioner submitted evidence of her education and experience, a resume, a business plan describing her proposed endeavor and claimed eligibility for a national interest waiver, and recommendation and support letters. She also provided a summary of her assets.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest waiver. In the RFE, the Director determined that the Petitioner had established the substantial merit of the proposed endeavor and that she is well-positioned to advance the proposed endeavor. The Director determined, however, that the Petitioner had not established that the proposed endeavor was of national importance, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director specifically requested "a detailed description of the proposed endeavor and why it is of national importance."

The Petitioner's response to the RFE includes articles and industry reports discussing the importance of infrastructure development and renewable energy and identifying clean energy as a national

[2] The record demonstrates that the Petitioner holds a U.S. master's degree in international business earned in 2019, and a U.S. master's degree in international marketing earned in 2020. *See* 8 C.F.R. § 204.5(k)(3)(i).

initiative. The Petitioner also submitted evidence of certificates and awards awarded by [redacted] to [redacted] in Ecuador for its partnership, cooperation and collaboration.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had established that she is well-positioned to advance her proposed endeavor. However, the Director concluded that the Petitioner had not demonstrated that her proposed endeavor had national importance or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director stated that the Petitioner's evidence did not explain how her proposed endeavor as a human resources and business development manager is of national importance. The Director further stated that the record did not demonstrate that the Petitioner's endeavor will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in her field of endeavor. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of her prospective contributions to the United States, an urgent national interest in her contributions, the potential creation of jobs, or that her self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner does not assert that the Director erred in any conclusions of law or fact or misapplied USCIS policy in the decision. The Petitioner states that she is submitting the appeal "in efforts to better reflect [her] proposed endeavor and ask DHS to reconsider the case based on the additional evidence." She submits an updated personal statement, an updated business plan, and a tax document that describes the economic activities of [redacted] in Ecuador. She states that this evidence "offers deeper insight into how [redacted] can contribute to the growth and prosperity of the United States."

A. Substantial Merit and National Importance

The first 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

In determining national importance, the relevant question is not the importance of the field, 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 Id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n 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 890.

As noted above, the Director requested that the Petitioner submit a detailed description of her proposed endeavor in the RFE. Despite this opportunity, the Petitioner did not provide the requested detailed description. On appeal, the Petitioner does not explain why this requested evidence was not submitted in response to the RFE. The purpose of the RFE is to elicit further information that clarifies whether

eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Even if we consider the Petitioner's evidence for the first time on appeal, we would still dismiss this appeal. In addressing the proposed endeavor's national importance, the Petitioner's updated business plan relies on the merits of the services her business has provided in Ecuador and the importance of renewable energy solutions. Although she provides a job creation summary for the installation and maintenance of solar panels, she has not supported these assertions with sufficient independent, objective evidence. The evidence does not suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's experience will reach beyond benefitting her own company and clients or have broader implications within the field of telecommunications and energy. The record does not establish that her proposed endeavor stands to impact the field as a whole.

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the remaining prongs would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.