U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31134823

Date: MAY 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an interior designer/entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or a noncitizen of exceptional ability, 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had proven her eligibility for EB-2 classification or her eligibility for a national interest waiver. 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 because the Petitioner did not establish that her proposed endeavor has national importance and thus, she did not meet the national importance component of the first prong of the Dhanasar framework. See Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility for EB-2 classification or the remaining Dhanasar prongs.[1]

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

[1] 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).

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).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Next, a petitioner 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. at 889, provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[3] 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 determined that the Petitioner did not demonstrate her eligibility for EB-2 classification as either a member of the professions holding an advanced degree or its equivalent or a person who has exceptional ability.[4] Section 203(b)(2)(A) of the Act, 8 C.F.R. § 204.5(k). Concerning the national interest waiver, the Director determined that the Petitioner demonstrated that her proposed endeavor has substantial merit and that she is well-positioned to advance the endeavor. However, the Director further concluded that the Petitioner did not demonstrate that her 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 a labor certification.

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[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] 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).

[4] We agree with the Director's determination that the Petitioner did not demonstrate that she qualifies for EB-2 classification as an advanced degree professional. The Petitioner holds a "título de Tecnólogo em Design de Interiores" from the [redacted]. According to the American Association of Collegiate Registrars and Admission Officers' (AACRAO) Electronic Database for Global Education (EDGE), a Título de Tecnólogo (Title of Technologist) is awarded following two to three years of university study. Further, the Petitioner submitted a Form ETA 750 Part B that indicates that she has an "Associate" degree. Thus, the degree is not equivalent to a U.S. baccalaureate degree. 8 C.F.R. § 204.5(k)(3)(i)(B). Because we resolve this case on other grounds, we need not determine if the Petitioner qualifies for EB-2 classification as a noncitizen of exceptional ability.

The Petitioner, an interior designer/entrepreneur, intends to develop and expand her business, [redacted][5] She states that she has more than 15 years of experience in "Interior Design and Personal Organizer, Sustainable Design, AutoCad and Audodesk, Project Management, Architecture and Construction, Negotiation, and Team Development." She asserts that her proposed endeavor will "contribute to access to innovation, new business practices, economic prosperity, and overall societal welfare."

With the initial filing, the Petitioner submitted her attorney's cover letter, a "Definitive Statement," a business plan, evidence of her education and experience, evidence of having established a company, employment letters, recommendation letters, an expert opinion letter, and articles and industry reports.

Following initial review, the Director issued a Request for Evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence to attempt to establish eligibility for EB-2 classification and a national interest waiver.[6] The Petitioner's response to the RFE includes a letter from counsel, resubmission of previously submitted evidence, evidence of her education and experience, employment letters, recommendation letters, and articles and industry reports.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had demonstrated that she was well positioned to advance her proposed endeavor. However, the Director determined that the Petitioner had not demonstrated that she was eligible for classification as an advanced degree professional or a noncitizen of exceptional ability. Further, the Director concluded that the Petitioner had not demonstrated that her 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 a labor certification. Specifically, the Director determined that the evidence did not support the Petitioner's statements that her proposed endeavor will have broader implications in the field, has a significant potential to employ U.S. workers, will have substantial positive economic effects, will broadly enhance societal welfare, or will broadly enhance cultural or artistic enrichment.

On appeal, the Petitioner submits a brief and asserts that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations," "did not apply the proper standard of proof…and erroneously applied the law," and "did not give due regard" to the Petitioner's resume, business plan, "work in the field," recommendation letters, or industry reports and articles.

As to the Petitioner's contention that the Director imposed "novel substantive and evidentiary requirements." We disagree. Although the evidentiary standard in immigration proceedings is the preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A

[5] We note that the Petitioner also submitted a certificate of organization and other documents for [redacted] but does not explain its role in her proposed endeavor. We further note that the Petitioner submitted a job offer in her RFE response that is directed at her personally and not the entity she associates with her proposed endeavor. To the extent her proposed endeavor relies on starting her own business and the job offer conflicts without resolution, we cannot fully assess the impact of any proposed endeavor. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

[6] In the RFE, the Director concluded that the Petitioner had not demonstrated that she was eligible for EB-2 classification or that she qualified for a national interest waiver as a matter of discretion. However, the Director determined that the Petitioner had shown that her proposed endeavor was of substantial merit.

petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. Matter of Y-B-, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); also see the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). The Director correctly states that the Petitioner must demonstrate that she is eligible for a national interest waiver by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76. Notwithstanding citation to a range of cases, the Petitioner does not analyze how the Director failed to properly consider the evidence in the record. Further, the Petitioner points to her resume and her "work in the field" that go to the second prong of the Dhanasar analytical framework which the Director determined the Petitioner had established.[7] The articles and industry reports that the Petitioner references are general and do not discuss her proposed endeavor.

In determining national importance under Dhanasar, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have a 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. We look to the Petitioner's specific proposed endeavor's potential prospective impact in determining national importance.

On appeal, the Petitioner contends that her proposed endeavor in "Interior Design and Entrepreneurship" via the "establishment of [redacted]...is poised to create direct and indirect employment opportunities." Further, the Petitioner asserts that her "commitment to serving small and medium-sized enterprises, particularly those owned by minorities and women, aligns with federal initiatives." The Petitioner adds that her "extensive experience, reflected in her diverse portfolio and leadership roles, showcases her influence on industry trends and standards in interior design."

First, we note that the Petitioner's arguments as to her proposed endeavor's asserted national importance do not meet the required burden of proof based on the totality of the evidence. In her brief on appeal, the Petitioner urges that "considering how much of a professional of her caliber can contribute to the U.S. economy" that her "proposed endeavor is clearly of national importance." However, when considering the national importance of a proposed endeavor we do not look to a Petitioner's qualifications and expertise but rather to whether the endeavor would have substantial positive economic effects, has a significant potential to employ U.S. workers, would broadly enhance societal welfare, or would broadly enhance cultural and artistic enrichment. Thus, the Petitioner's contention that her experience shows the national importance of her proposed endeavor will not meet her burden to establish national importance.

[7] We need not reach a decision on whether the Petitioner is well-positioned to advance her proposed endeavor as we decide this case on another basis.

Next, the Petitioner claims that the establishment of her corporation will create "employment opportunities, contributing to the national employment rate and overall economic health." In her "Definitive Statement," the Petitioner says that her business is "headquartered in Massachusetts and is set to serve HUBZone areas." She asserts that "[t]he aim is to generate jobs for U.S. workers in these underserved areas, while at the same time offering them opportunities to build up and expand their professional possibilities." Further, she states that her business "expects in the next five (5) years of operation to be generating 43 direct jobs for U.S. workers." Besides the asserted job creation, the Petitioner states that "[b]y [her company's] fifth year, total revenues will reach $17,453,887 with an expected payment of $1,073,846 in Taxes on income, from a total investment of $1,407,604."

Regarding the Petitioner's HUBZone assertions, we address those below. As to the Petitioner's claims regarding job creation for U.S. workers and tax revenue generated, she points to her business plan for corroboration. On review of the Petitioner's business plan, we find the Petitioner's contentions unsupported by the evidence in the record. For example, the business plan shows that in "Year 1" the Petitioner's company will receive $118,933.75 of investment. There will also be 13 new jobs created. Net sales are forecast to be $1,503,500.00 and gross profit is expected to be $608,675.00 in "Year 1." While the Petitioner has submitted evidence that the corporate entity exists, the record does not substantiate how the projections found in her statement and business plan will be realized. The Petitioner does not demonstrate how the entity she has created will be funded or that it has pending contracts for jobs to be completed. In the same way that the teaching activities proposed by the petitioner in Dhanasar were not shown to have a broader impact on the field of STEM education, here the Petitioner has not demonstrated that her proposed endeavor would have broader implications in the field of interior design on the U.S. economy beyond the companies benefiting from the Petitioner's services. Matter of Dhanasar, 26 I&N Dec. at 893. We conclude that the Petitioner has not demonstrated the national importance of her endeavor based on her asserted projections on revenue and taxes.

Further, the Petitioner has not put forth sufficient evidence demonstrating that her proposed endeavor has "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." See Matter of Dhanasar, 26 I&N Dec. at 890. The Petitioner's business plan states that the Petitioner's company "will be located in a HUBZone within [redacted] Massachusetts."[8] We note that the Petitioner has not provided evidence that her endeavor will participate in the Small Business Administration's HUBZone program or that the principal office of her business will be in a HUBZone. Significantly, the Petitioner provided a "Business Entity Summary" that shows her corporation's principal office is in [redacted] Massachusetts, which is not located within a HUBZone according to the Small Business Administration's website. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not demonstrated how her proposed endeavor will have substantial positive economic effects in an economically depressed area.

[8] According to the Small Business Administration's website, "[t]he HUBZone program fuels small business growth in historically underutilized business zones with a goal of awarding at least 3% of federal contract dollars to HUBZone-certified companies each year."

Professor [redacted] of the [redacted] provided an expert opinion letter on behalf of the Petitioner. We acknowledge that the expert opinion letter includes an asserted analysis of the national importance of the Petitioner's proposed endeavor. Professor [redacted] states that the Petitioner is an "experienced Interior Designer" who has "knowledge of Brazil's arts industry." Based on the Petitioner's asserted experience and knowledge, Professor [redacted] concludes that the Petitioner will have the ability to "seize market opportunities and investment in the arts sector of Brazil." However, the Petitioner's proposed endeavor is not to "seize market opportunities" in Brazil but rather to develop and expand her business, [redacted] which is an interior design company in the United States. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id.

We conclude that the expert opinion is of little probative value as the opinion does not meaningfully address the details of the Petitioner's proposed endeavor and why it would have national importance. Professor [redacted] does not explain how the Petitioner's proposed endeavor will have substantial rather than marginal effects on the U.S. economy. While Professor [redacted] asserts that "interior designers will be needed to help accommodate the future living needs of an aging population," she does not show how the Petitioner's proposed endeavor will specifically be a significant, nationally important, part of that process. Professor [redacted] does not explain how the Petitioner's proposed endeavor will be a part of the future need for preparing accommodations for an "aging population" or how be a nationally important component of that process.

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 second and third prongs would serve no meaningful purpose. Thus, we reserve our decision on the Petitioner's eligibility under *Dhanasar's* second and third prongs. 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 requisite first prong of the Dhanasar analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.