U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31112893

Date: MAY 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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. The Director concluded that the Petitioner does not qualify for classification as a member of the professions holding an advanced degree; however, the Director did not address whether, in the alternative, the Petitioner qualifies for classification as an individual of exceptional ability. The Director also concluded 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 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 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established

eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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. *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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director concluded that the Petitioner does not qualify for classification as a member of the professions holding an advanced degree; however, the Director did not address whether, in the alternative, the Petitioner qualifies for classification as an individual of exceptional ability. *See* section 203(b)(2) of the Act. Furthermore, the record does not clarify why the Director addressed whether the Petitioner may qualify for a national interest waiver if she was ineligible for second-preference classification, as the Director concluded.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* section 203(b)(2) of the Act; *see also 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"); *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).

The Petitioner described the endeavor as a plan to create an "academic consulting and professional services company" that will provide "training for teachers and support staff of educational institutions, strengthening their skills and soft skills through personal and professional growth activities." The Petitioner indicated that her company would employ an "interdisciplinary consulting team made up of qualified personnel, and specialists with specific functions," whom she would direct as the company's manager. The Petitioner elaborated that the company's employees would include workers with the following job categories: business administrator, clinical psychologist, occupational therapist, special educational needs professional, "graduates in education," and marketing. However, the Petitioner did not specify the number of workers in any particular job category that her company would employ. The Petitioner also referenced "potential clients in Florida and throughout United States [sic]." Additionally, the Petitioner submitted copies of publications that provide generalized information regarding education.

The Director acknowledged the Petitioner's description of the proposed endeavor; however, the Director concluded that the record does not establish that the proposed endeavor has substantial merit,

as required by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91. The Director also observed that the record "fails to demonstrate how working as a school owner, manager, and educator has national or even global implications," referencing the first *Dhanasar* prong. The Director further noted that the Petitioner "has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects," again referencing the first *Dhanasar* prong. The Director concluded the record does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. The Director further concluded that the record does not satisfy the second or third *Dhanasar* prongs. *See id.*

On appeal, the Petitioner reasserts that her personal statements and copies of publications in the record that provide generalized information regarding education establish the proposed endeavor has national importance.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's references to publications in the record that provide generalized information regarding education are immaterial to whether the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See id.* The publications in the record, including those referenced on appeal, that provide generalized information regarding education do not address the Petitioner, the specific endeavor she proposes to undertake, and how the potential prospective impact of the specific endeavor she proposes to undertake may have the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* Because the publications that provide generalized information do not inform how the specific endeavor the Petitioner proposes to undertake may have national importance, they do not establish eligibility and we need not address them further.

The Petitioner's plan to operate a consulting company appears to benefit the clients and customers who may use the Petitioner's company's services; however, the record does not establish how the potential prospective impact of the proposed endeavor will have the type of broader implications indicative of national importance, as contemplated by the first *Dhanasar* prong. *See id.* For example, neither the Petitioner's statements nor the remainder of the record establish how the consulting company and the services it would provide may have national or even global implications, "such as those resulting from certain improved manufacturing processes or medical advances," within the field of education, academic consulting, business consulting, or any other particular field. *See id.* Neither

the Petitioner's statements nor the remainder of the record elaborate on how the "training for teachers and support staff of educational institutions, strengthening their skills and soft skills through personal and professional growth activities," that the Petitioner's company may provide differ from pedagogical training and business consultation services that other pedagogical instructors and business consultation services already provide to teachers and support staff in the United States. As another example, although the Petitioner identifies job categories for workers her company intends to employ, neither the Petitioner's statements nor the remainder of the record establish how employing some unspecified number of workers in those job categories may demonstrate "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.*

In summation, 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. *See id.* We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong, and whether the proposed endeavor has substantial merit, as required by the first *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

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.