U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31202643

Date: MAY 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a social worker, 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. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she was eligible for the requested classification or that a waiver of the classification's job offer requirement, and thus of the labor certification, 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 because the Petitioner did not establish that her proposed endeavor has national importance and thus, she did not meet the national importance requirement 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 the remaining *Dhanasar* 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).

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

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).

Once eligibility for the EB-2 visa classification is established, 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:

- 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 states that she has more than 20 years of experience in social work and psychology. She states that her proposed endeavor is to provide "instruction coordination and training for family counseling and advocacy in primary education programs focused on child welfare, as well as … teaching activities for children in early learning programs."

With the initial filing the Petitioner submitted her resume and evidence of her education and experience, certificates of achievement and recognition, and recommendation and support letters. She also provided evidence of her membership in the National Association of Social Workers in Venezuela.

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. The Director specifically noted that the Petitioner did not provide sufficient specific information about her proposed endeavor and requested "a detailed description of the proposed endeavor and why it is of substantial merit." The Petitioner's response to the RFE includes additional letters verifying the Petitioner's experience, a professional plan, an expert opinion letter, and a strategic plan published by the U.S. Department of Health and Human Services' Administration for Children and Families.

[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).

[2] The record demonstrates that the Petitioner holds the foreign equivalent of a U.S. master's degree awarded in 2022. *See* 8 C.F.R. § 204.5(k)(3)(i).

In the Petitioner's professional plan, she states that she will develop her business, [redacted] to offer "an array of services dedicated to elevating the standards of child welfare and family advocacy." The professional plan states that the business will operate in Florida and will offer workshops and training, early learning programs, family support services, curriculum development and resource sharing, certification and training programs, and community collaboration. The Petitioner also states that her business will have an online presence to offer resources to parents and caregivers. The professional plan includes a market analysis, personnel plan, pricing strategy and a financial summary. The Petitioner projects that her business will have a total of six employees by its third year, including herself as chief executive officer. In her financial summary, the Petitioner projects that her business will have revenues of $824,285 and a net income of $397,490 by its fifth year.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner did not submit sufficient evidence to describe her proposed endeavor. The Director concluded that the Petitioner did not establish that her proposed endeavor has substantial merit or national importance. The Director further concluded that the Petitioner had not demonstrated that she is well-positioned to advance her proposed endeavor, or that, on balance, waiving the job offer requirement would benefit the United States. The Director stated that the record did not demonstrate that the Petitioner's proposed 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. The Director noted that the Petitioner's reliance on the importance of the field is insufficient to establish that her proposed endeavor is of national importance. 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 submits a brief and asserts that the Director's decision uses a template that does not include an "individualized assessment of [the Petitioner's] qualifications, contributions, and the national importance of her proposed endeavor." The Petitioner asserts that the Director erred in not assessing the totality of the evidence and applying the requisite preponderance of the evidence standard. In her brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that she merits a national interest waiver.

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. Here, the Petitioner's proposed endeavor is in social work, including family counseling and early education. We withdraw the Director's determination that the Petitioner's proposed endeavor does not have substantial merit but conclude that her proposed endeavor does not have 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.

The Petitioner submits her professional plan in attempting to support the national importance of her proposed endeavor. On appeal, the Petitioner asserts that the plan "outlines an endeavor that seeks to revolutionize family support and child development, with a focus on child welfare and family advocacy." The Petitioner's professional plan provides general information about her proposed business, [redacted], including a mission and vision statement, company goals, a business model and an industry outlook. The plan provides general predictions that the business will contribute to the U.S. economy with "economic growth, tax generation, reducing unemployment, and cost savings." The Petitioner does not support these assertions with sufficient independent, objective evidence. Rather, the Petitioner's professional plan provides generalized projections that are not specific and detailed enough to establish the potential prospective impact of her proposed endeavor.

The professional plan provides various "sales strategies" that the Petitioner intends to use to market her services, including "workshops and information sessions," "collaborative alliances," and "focused outreach." However, the plan does not provide detail about these strategies. The Petitioner does not identify the target audience for her workshops or explain the material she intends to present. She does not identify specific stakeholders with whom she would collaborate. Nor does she identify specific events in which she would participate to reach clients and "[establish] a recognized brand identity."

The Petitioner's projection of creating six jobs does not demonstrate a significant potential to employ U.S. workers or support that her proposed endeavor will have substantial positive economic effects. Although the Petitioner asserts that her proposed endeavor will "revolutionize family support and child development," 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 social work. The record does not establish that her proposed endeavor stands to impact the field as a whole.

The Petitioner submits a strategic plan of the Administration for Children and Families. The plan describes goals to "support the agency's mission to promote the economic and social well-being of children, youth, families, individuals, and communities." Although the plan tends to support that the welfare of children and families is a national initiative, the report does not specifically discuss the Petitioner's proposed endeavor. "In determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (emphasis added).

When determining national importance, the relevant question is not the importance of the 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 Matter of Dhanasar*, 26 I&N Dec. at 889. Although we agree that the welfare of children and families are important and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the Petitioner's specific proposed endeavor. The record contains insufficient information or evidence regarding the Petitioner's proposed endeavor to show broad potential implications demonstrating national importance.

The Petitioner also submits recommendation letters from former colleagues. We note that the letters describe the Petitioner's job duties, rather than describing achievements that had broad implications to the field of social work or identifying skills that differ from or improve upon those already available and in use in the United States. Although the letters praise her qualifications and professionalism, the Petitioner's skills, expertise, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar's* first prong.

To support the claimed national importance of her proposed endeavor, the Petitioner references an expert opinion prepared by Dr. [redacted] We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In her analysis Dr. [redacted] discusses the Petitioner's academic and professional background. Dr. [redacted] states:

> Leveraging her extensive experience in child welfare, specifically in teaching and coordinating education programs and children's welfare projects, she is poised to make a significant and positive impact on the well-being and development of the young minds she will serve. Her proposed endeavor has substantial merit and is of national importance. The importance of her work cannot be overstated as it directly contributes to the holistic development and will-being of the nation's future citizens.

However, Dr. [redacted] does not discuss any specific details of the Petitioner's proposed endeavor. 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.* Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the Petitioner's specific proposed endeavor and why it would have national importance. Dr. [redacted] does not elaborate on how the Petitioner's specific proposed endeavor will have a prospective impact on the United States, including the broad implications on social work, the potential to employ U.S. workers, or the positive economic effects. Rather, her opinion is general in nature, concluding that, because the Petitioner's proposed endeavor is to assist children and families, it has national importance.

On appeal, the Petitioner relies upon the evidence she previously submitted and asserts that the Director disregarded it. While we agree that an adjudicator should consider the relevant evidence in

the record,[3] the Petitioner does not sufficiently support her claim that there was relevant evidence that the Director did not consider. We note that the decision discusses each of the claimed pieces of evidence and includes several direct quotations. Nevertheless, we address them again herein. The Petitioner continues to rely upon the asserted demand for the services she will provide, her professional experience and achievements, and the importance of the field of social work and child welfare generally. However, as set forth above, the evidence does not sufficiently demonstrate the Petitioner's proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

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 second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.[4] *See INS v. Bagamasbad*, 429 U.S. at 25.

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.

[3] *See* 8 C.F.R. § 103.2(b)(1).

[4] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that the Petitioner did not establish the national importance of her proposed endeavor, that she is well-positioned to advance the proposed endeavor, 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the three *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that she meets all of the three *Dhanasar* prongs.