U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37267328

Date: MAY 16, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a bakery and pastry chef, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual 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 the Petitioner's eligibility for the requested national interest waiver. 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. 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).

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).[1] Meeting

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

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.[3]

If 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. 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[4], 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.

Id.

II. ANALYSIS

A. Advanced Degree

While the Director concluded that the Petitioner established eligibility for the underlying EB-2 classification as a member of the professions holding an advance degree, we disagree. The Petitioner's Application for Permanent Employment Certification ETA-9089 Appendix A listed no high school, Associate, Bachelor's, Master's, Doctorate or other degrees. Rather, this form listed three month-long training courses: wedding cakes and fine chocolates course, sugar flower course, and a second sugar flower course-level 1 and gum paste techniques.

Without a minimum of a U.S. bachelor's degree or foreign equivalent, the Petitioner cannot qualify as an advanced degree professional, regardless of whether she has at least five years of experience.

For the above reasons, the Petitioner has not established eligibility for the EB-2 classification as an advanced degree professional and we withdraw the Director's determination on this issue. Moreover, since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether she qualifies for EB-2 classification as an individual of exceptional

[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 Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); see generally 6 USCIS Policy Manual, supra, at F.5(B)(2).
[4] 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).

ability for future consideration should the need arise.[5] We also note that the Petitioner did not apply for classification as a member of the professions holding an advance degree. Rather, the Petitioner applied for classification as an individual of exceptional ability.

III. NATIONAL INTEREST WAIVER

The Petitioner's proposed endeavor is to direct and oversee the operation of [redacted] LLC in [redacted] Florida. The company plans to offer delicious and nutritious products and create a technological platform that promotes a unique experience for customers, combining convenience, personalization, and health.

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. Matter of Dhanasar, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Id. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id.

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Dhanasar at 889. The Director found that the Petitioner's endeavor has substantial merit, and we agree.

Turning to the national importance of her endeavor, the Director concluded that the Petitioner did not establish that her proposed endeavor would prospectively impact the region or nation beyond its direct customers. The Director reviewed and analyzed the Petitioner's claims including her business plan with employment creation assertions, expert opinion letter, reference letters, and baking industry reports and articles and discussed their deficiencies. On appeal, the Petitioner submits a brief which generally reiterates the benefits of her proposed endeavor, her qualifications, and the claimed economic impacts of her proposed bakery company and contends that she has established the national importance of her proposed endeavor. She does not, however, provide any new evidence or arguments which overcome the Director's determination. The new evidence presented on appeal are articles about the prevalence of obesity in the United States, the cost of obesity as it is linked to chronic conditions such as diabetes, heart disease and various cancers. Although the Petitioner claims her endeavor will provide minimally processed baked goods, offer community engagement, and educational workshops, the Petitioner has not met her burden to show that her bakery endeavor will have broader implications on a national level.

In Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact her field more broadly. Id. at 893. Here, we

[5] 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 alternate issues on appeal where an applicant is otherwise ineligible).

similarly conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her co-workers, employees, and customers to impact the bakery industry more broadly at a level commensurate with national importance. Nor has she shown that the particular work she proposes to undertake offers original innovations that contribute to advancements in the bakery industry or otherwise has broader implications for the bakery industry.

Furthermore, 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 for our nation. For example, she stated that her proposed endeavor will increase profits, lead to job growth, generate greater tax revenue, and that she would expand to [redacted] and [redacted]. Rather than provide any specific, corroborated figures, she offered speculative projections. Without probative evidence regarding any projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

Therefore, we adopt and affirm the Director's decision as it relates to this prong. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

For the reasons stated above, we agree with the Director's conclusion that the Petitioner has not established her proposed endeavor is of national importance.

III. CONCLUSION

As explained, we withdraw the Director's determination that the Petitioner has demonstrated that she is an advanced degree professional. Further, because the Petitioner has not met the requisite first prong of 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs. See INS v Bagamasbad, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); 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). We also reserve a determination as to the Petitioner's eligibility for the underlying immigrant classification as an individual of exceptional ability. Id.

ORDER: The appeal is dismissed.