U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31140783

Date: MAY 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the home health care field, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(1). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*; *see also Brasil v. Sec'y, Dep't of Homeland Sec.*, 28 F.4th 1189, 1193 (11th Cir. 2022) (holding that a national interest waiver decision is discretionary).

The Director of the Texas Service Center denied the petition. The Director found the Petitioner eligible for EB-2 classification as a member of the professions holding an "advanced degree." *See* section 203(b)(2)(A) of the Act. But the Director concluded that the Petitioner did not demonstrate the merits of her national interest waiver request. On appeal, the Petitioner contends that the Director overlooked evidence that: her proposed endeavor has "substantial merit" and "national importance;" she is "well positioned" to advance the venture; and a waiver would benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has established that her proposed endeavor has substantial merit. But the Petitioner has not demonstrated the venture's purported national importance. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must demonstrate their qualifications for the EB-2 category, either as advanced degree professionals or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this immigrant visa category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements

by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016).

II. ANALYSIS

A. Proposed Endeavor

The record shows that the Petitioner, a Brazilian native and citizen, earned a bachelor's degree in nursing and obstetrics and completed post-graduate programs in occupational health nursing, family health nursing, and obstetrics in her home country. She gained more than 20 years of nursing experience in Brazil. Her most recent position there was nursing supervisor at a hospital.

The Petitioner states her intent to establish a company in the United States that would provide home health care services. Her business plan projects that, by its fifth year of operations, the company would generate more than $1.8 million in revenues. She states that the business plans to employ 11 professionals.

B. EB-2 Eligibility

The record supports the Petitioner's qualifications for EB-2 classification as an advanced degree professional. She documented her possession of the foreign equivalent of a U.S. bachelor's degree in nursing followed by more than five years of progressive experience in the field. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include "[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty").

C. Substantial Merit

A proposed endeavor may have substantial merit if it "has the potential to create a significant economic impact" or relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director found insufficient evidence that the Petitioner's proposed endeavor has substantial merit. The Director gave no evidentiary weight to the Petitioner's business plan, finding that it was not fully

translated into English. *See* 8 C.F.R. § 103.2(b) (requiring "a full English language translation" of any document submitted to USCIS containing a foreign language). The Director also faulted the Petitioner for omitting copies of articles and other information she cited in the petition.

On appeal, the Petitioner asserts that her business plan and the other documents she submitted in response to the Director's request for additional evidence (RFE) were "fully translated into English." The record, however, indicates that much of the business plan was not in English, and the record lacks a translation of the non-English portions. We will credit only the business plan's English parts, which include financial projections.[1]

In the petition, the Petitioner footnoted articles and other cited information sources, providing their Uniformed Resource Locator (URL) addresses on the Internet. Thus, the Director had access to the cited materials. We therefore do not require copies of the cited information.

Contrary to the Director, we find sufficient evidence demonstrating that the Petitioner's proposed endeavor has substantial merit. Her statements, cited materials, an expert opinion, and the English portions of her business plan establish that her company has the potential to generate revenues and U.S. jobs. Evidence also indicates that the proposed business would help the country cope with a nursing shortage and care for a rapidly aging population. The Petitioner therefore has demonstrated that her proposed endeavor has substantial merit.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

We agree with the Director's finding that insufficient evidence supports the purported national importance of the Petitioner's proposed endeavor. As the Director stated, "Overall, the petitioner has not offered sufficient evidence to demonstrate that her business stands to impact the regional or national population at a level consistent with having national importance."

As previously indicated, the Petitioner's business plan projects fifth-year revenues of more than $1.8 million and employment of 11 professionals. But the record does not indicate the business's potential to substantially boost the economy nationally or regionally. She claims that the city where she plans

[1] On appeal, the Petitioner submits a full English version of her business plan. But the Director's RFE requested "[a] detailed description of the proposed endeavor," and the Petitioner had an opportunity to provide an English business plan in response to the RFE. The RFE also notified the Petitioner of the need for English translations of documents containing foreign languages. We therefore will not consider the business plan's full English version. *See Matter of Izaguirre*, 27 I&N Dec. 67,71 (BIA 2017) (declining to consider evidence on appeal where a petitioner received notice of the required evidence and a reasonable opportunity to provide it before the petition's denial).

to operate her business is a "HUBZone," a Historically Underutilized Business zone that, based on income and unemployment data, the U.S. Small Business Administration (SBA) has found to be "economically distressed." *See* SBA, "HUBZone Program," www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program. But the record lacks evidence to support her claim. Information on the SBA website indicates that parts of the city are HUBZones. The Petitioner states her intent to establish her company "in rented space close to residential neighborhoods." But she does not specify where her business would be in the city or explain how the company would otherwise benefit a HUBZone. Also, the record does not demonstrate that the Petitioner's business would substantially advance the U.S. home health care field.

On appeal, the Petitioner contends that her proposed business "has significant potential to employ U.S. workers" and provide "other positive economic effects." She states that her proposal would support other businesses, boost tax collection and income, and "generate economic alternatives for various areas going beyond [the business's] suppliers, employees, and consumers." Further, she states that her company would impact several fields, including: entrepreneurship; business; science; technology; culture; health; and education.

The Petitioner's evidence, however, does not sufficiently indicate that her proposed business would have national implications. The record does not explain how the business's projected generation of $1.8 million in revenues and employment of 11 professionals would substantially affect the national or regional economy. The record also does not demonstrate that her business would advance the U.S. home health care field.

The Petitioner asserts that her business would generate 74 indirect employees. She states:

> [A]lthough the number of direct jobs offered . . . may initially appear unpretentious, the proposed venture provides benefits that extend beyond the [business's] community, with the potential to impact the Home Health Care services industry more broadly, based on the fact that my proposed effort is also inserted in other production chains, for example, the Pharmaceutical and Medical-hospital Equipment industries.

The Petitioner's projection of 74 indirect jobs, however, contradicts another statement she makes. She states that for every 100 jobs in the home health care field, 98.1 indirect jobs are generated. Thus, under the Petitioner's own suggested formula, her business's generation of 11 direct jobs would generate only about 10 indirect positions, not 74. Even if the record supported the business's generation of 74 indirect jobs, the Petitioner has not demonstrated that the company would substantially boost the national or regional economy.

The Petitioner argues that "**my entrepreneurial action has substantial merit and national importance** when it follows" 2022 USCIS guidance on national interest waivers. (emphasis in original); *see* USCIS, "USCIS Updates Guidance on National Interest Waivers," (Jan. 21, 2022), https://www.uscis.gov/newsroom. But, contrary to the Petitioner's argument, adherence to the guidance does not necessarily demonstrate that an entrepreneur's proposed endeavor has substantial merit and national importance. The guidance merely "clarif[ies] how the national interest waiver can be used by . . . entrepreneurs" and provides "[s]pecific [e]videntiary [c]onsiderations for [e]ntrepreneurs." USCIS, "USCIS Updates Guidance on National Interest Waivers," (Jan. 21, 2022);

6 *USCIS Policy Manual* F.(5)(D)(4). For example, the guidance identifies awards or grants from governmental entities as potential evidence that an entrepreneur's proposed endeavor has national importance. 6 *USCIS Policy Manual* F.(5)(D)(4). The Petitioner has not demonstrated that the guidance supports the purported national importance of her proposed business or that USCIS did not follow the guidance.

The Petitioner also argues that her proposed endeavor supports President Biden's SBA budget for fiscal year 2024. She states that the budget proposes increased investments in counseling and training programs, expands small businesses' access to capital, and promotes access to government contracting opportunities.

We agree that a proposed endeavor's alignment with governmental goals or policies can serve as evidence of the venture's national importance. *See* 6 *USCIS Policy Manual* F.(5)(D)(2) (discussing USCIS' recognition of the importance of science, technology, engineering, and mathematics (STEM) fields based on their significance to U.S. competitiveness and national security). But the Petitioner has not demonstrated that her business would broadly affect small businesses at a nationally important level.

As the Director noted, the Petitioner's proposed endeavor resembles one that we determined in *Dhanasar* to lack national importance. There, we found that a proposal to teach U.S. university students in STEM disciplines had substantial merit. *Matter of Dhanasar*, 26 I&N Dec. at 893. But we concluded that the proposal lacked national importance because "the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.* Like the petitioner in *Dhanasar*, the Petitioner's proposed endeavor has substantial merit. But also like that petitioner, the Petitioner has not demonstrated that venture would impact her field or the economy "more broadly."

The Petitioner has not established the claimed national importance of her proposed endeavor. We will therefore affirm the petition's denial.

E. Remaining Issues

Our decision regarding the national importance of the Petitioner's proposed venture resolves this appeal. Thus, as with her claims regarding her purported EB-2 eligibility, we decline to reach and hereby reserve consideration of her appellate arguments about her positioning to advance her proposed venture and a waiver's benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate appellate issues where a noncitizen did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has demonstrated that her proposed endeavor has substantial merit. But she has not established the venture's claimed national importance. Thus, under our framework, she does not qualify for a national interest waiver. We will therefore affirm the petition's denial for lack of a valid labor certification.

ORDER: The appeal is dismissed.