U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31137531

Date: MAY 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a general operations manager who intends to own and operate [redacted], a virtual specialty food distribution market. She seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business, 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 although the Petitioner established that she qualifies for the underlying EB-2 visa classification as an individual holding an advanced degree,[1] she did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that her endeavor has national importance,[2] (2) did not demonstrate that she is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States. *Id.* 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 specific proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the *Dhanasar* framework. Because the 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 two 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

[1] The record contains and degree certificate and corresponding transcript showing that the Petitioner completed the required coursework and was awarded a bachelor's degree in "Social Communication – Advertising and Publicity" in December 2005 and that she subsequently attained at least five years of progressive experience in the specialty as required. 8 C.F.R. § 204.5(k)(2).

[2] While not discussed in the Director's decision, the record indicates that the Petitioner's endeavor has substantial merit.

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).

Further, we adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's endeavor. *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 the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

In addressing the issue of national importance, the Director discussed the Petitioner's proposed endeavor to own and develop a food distribution company. Namely, the Director addressed the Petitioner's supporting statements and business plan, recognizing her years of experience in the sales and marketing field as well as her intent to operate her business as a digital marketplace and distribution center offering ethnic and specialty food products. However, the Director determined that the Petitioner did not establish that the impact from her endeavor would reach beyond her organization or its clients to more broadly impact her industry or field.

The Director also determined that the Petitioner did not provide evidence to substantiate the growth projections in her business plan or demonstrate that her endeavor has significant potential to employ U.S. workers or benefit the regional or national economy to create "substantial positive economic effects" as contemplated in *Matter of Dhanasar*, 26 I&N Dec. at 890. Further, despite acknowledging the Petitioner's submission of articles and industry reports, the Director pointed out that neither the articles nor reports discussed the Petitioner's specific endeavor and thus they were deemed insufficient for the purpose of demonstrating the endeavor's national importance.

After reviewing the evidence, the Director concluded that the Petitioner did not establish that her proposed endeavor would rise to the level of having national importance.

On appeal, the Petitioner alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the Appellant." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that she has provided evidence sufficient to demonstrate eligibility for the EB-2 classification and a national interest waiver, she does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner further contends that her endeavor "has broader implications within the field of sales and marketing," asserting that her business "will contribute to a more diverse and enriched marketplace" and that it will result in "broader cultural diversity and enrichment." However, the Petitioner has not provided evidence to demonstrate that her business would result in an impact of

regional or national importance or that she would operate on such a scale as to rise to the level of national importance.

In addition, the Petitioner contends that the Director did not "give due regard" to her résumé, business plan, letters of recommendation, or industry reports and articles that were previously submitted. However, as noted above, the Director specifically mentioned the Petitioner's business plan as well as the industry reports and articles, explaining how the evidence falls short of demonstrating the national importance of the proposed endeavor. As the Director correctly pointed out, the Petitioner has not substantiated the projections in her business plan, including her plan to hire 178 employees by her company's fifth year of operation. Moreover, the Petitioner did not establish that successful execution of her hiring plan would have broad implications for the U.S. labor market. We also note that a petitioner must establish eligibility based on the facts and circumstances that existed when the petition was filed. *See* 8 C.F.R. § 103.2(b)(1). Here, while the Petitioner's national importance claim hinges primarily on establishing [redacted], the record lacks evidence that the company has been formed and that it was in existence at the time of filing.

Also, while the Petitioner stresses her credentials and work experience, which were also highlighted in her résumé and recommendation letters, the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar,* 26 I&N Dec. at 890. Evidence of the Petitioner's credentials and experience in sales and marketing does not demonstrate the national importance of the proposed endeavor or establish that the impact of the endeavor would extend beyond the Petitioner's company and prospective customers.

Lastly, the Petitioner argues that by selling "culturally diverse ingredients and specialty products," her endeavor will "enhance cultural or artistic enrichment." However, as noted earlier, the Petitioner has not provided evidence concerning the formation or her business, nor has she established that the potential prospective impact of her business would result in broader implications on national or global scale as contemplated in *Matter of Dhanasar*. *Id.* at 889.

In sum, the Petitioner has not overcome the Director's adverse conclusion regarding the issue of national importance, and therefore she has not established that she merits a national interest waiver.

ORDER: The appeal is dismissed.