U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30644175

Date: MAY 28, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is a business intelligence analyst who 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 (NIW) 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record established that the Petitioner qualified for the underlying visa classification, but she did not merit a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

Once a petitioner demonstrates eligibility for the 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. 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 NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

II. NATIONAL INTEREST WAIVER

The Petitioner holds two master's degrees, a bachelor's degree, and accumulated more than a decade working in the information technology sector. Her proposed endeavor is to be an entrepreneur and develop an information technology consulting firm.

A. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

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. *Dhanasar*, 26 I&N Dec. at 889.

Without providing analysis on the issue, the Director stated within the request for evidence (RFE) that the Petitioner established the proposed endeavor was of substantial merit, and they reiterated this within the petition's denial.

Still, after reviewing the entire record we adopt and affirm the Director's decision relating to the proposed endeavor's national importance with the added comments below. *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 the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Pascual-Miguel v. Garland*, 89 F.4th 657, 659 (8th Cir. 2023) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

After the Director provided a thorough analysis of the Petitioner's claims and evidence, their counsel crafted an appeal brief that essentially duplicates the June 9, 2023 cover letter they provided in response to the Director's RFE. At no point within the appeal brief does the Petitioner—through counsel—attempt to refute the Director's conclusions, other than to convey disagreement with the outcome. The majority of the content that does diverge from the RFE response is the opening paragraph in which counsel presents accusations that lack any analysis to support the claims. Among those are that the Petitioner was "deprived of due process rights and fair treatment under USCIS policy, the United States Constitution, and international treaties . . . ." Counsel offers no examples of due process violations, nor do they further address the remaining extravagant allegations.

Even if we were not adopting and affirming the Director's decision, we would still dismiss the appeal for multiple reasons. First, the appeal brief's first prong portion appears to be an immigration placeholder of sorts because it does not achieve the primary purpose of an administrative appeal: To allow the Petitioner to remedy what she perceives as an erroneous conclusion of law or statement of fact within the Director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v). Within an appeal, it should be clear whether the alleged impropriety in the decision lies with the interpretation of the facts or the application of legal standards. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986); *see also Matter of Keyte*, 20 I&N Dec. 158, 159 (BIA 1990). The absence of

such an impropriety under *Dhanasar's* dispositive first prong by itself is a basis for us to summarily dismiss the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v).

Second, the Petitioner's submission of essentially the same arguments she presented to the Director, without identifying the specific errors, will not serve as an adequate basis for the appeal. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). The absence of any error attributable to the Director's denial means the Petitioner has abandoned or waived her first prong claims. *Matter of Garcia*, 28 I&N Dec. 693, 693 (BIA 2023) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and finding issues that are not meaningfully challenged in the appeal are waived). Filing parties must do more than "merely mention an alleged error." *Karsjens v. Harpstead*, 74 F.4th 561, 568 n.3 (8th Cir. 2023), *cert. denied,* No. 23-642, 2024 WL 674802 (U.S. Feb. 20, 2024) (quoting *Sitzer v. Nat'l Ass'n of Realtors*, 12 F.4th 853, 855 n.2 (8th Cir. 2021). A passing reference in a brief will not suffice to preserve an issue for appeal and we will consider such a fleeting reference to waive the issue. *Id.*

Because the Petitioner has not sufficiently established her proposed endeavor's national importance as *Dhanasar's* first prong requires, she has not demonstrated eligibility for an NIW of the job offer requirement.

B. Well Positioned to Advance the Proposed Endeavor

As we explain above, *Dhanasar's* second and third prongs require the Petitioner to demonstrate she is eligible for an NIW meeting additional requirements. But because the Petitioner has not established that her proposed endeavor satisfies the *Dhanasar* framework's first prong, she is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose.

Consequently, we will not address—and we reserve—the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.