U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34190654

Date: NOV. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an architect, 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 while the Petitioner had established eligibility for EB-2 classification, she had not established eligibility for a national interest waiver as a matter of discretion. 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.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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,[2] 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

The remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.[3] Based on our de novo review of the record, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first *Dhanasar* prong.

The Petitioner, indicated on her Form I-140, Petition for Alien Worker, that she is an architect. In a personal statement submitted with the petition, the Petitioner claimed that her endeavor was of national importance to the United States because of its global and national implications, the significant potential to employ U.S. workers, ability to enhance social welfare, and because her industry is of national importance. She further stated that she intended to base her endeavor in [redacted] Florida, which would help the development of economically distressed areas in the state. The Petitioner contended that her endeavor could also assist other U.S. regions struggling with access to affordable housing and could also benefit geographic areas struggling with the effects of natural disaster. In a professional plan, the Petitioner further detailed that she intended to start a company offering architectural consulting services, specifically devising, improving, and executing architectural designs intended to reduce pollution and serve low- and medium-income individuals. She outlined her professional background which included a bachelor's degree in architecture and nearly ten years of self-employment as an architect in her native Brazil as well as a brief role as an architect at a remodeling and construction company in [redacted] She contended that there was a need for her company's services in the United States given the national shortage of affordable housing in the United States, a need for sustainable architecture, a shortage of architects. The Petitioner's professional plan detailed that she

[2] *See 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 is discretionary in nature).

[3] Although the Petitioner's appeal refers to the receipt number for her Form I-485, Application to Register Permanent Resident or Adjust Status, the contents of the appeal submission pertain to her denied request for a national interest waiver. Accordingly, the referenced receipt number appears to be in error and we will treat the I-290B as an appeal of the form I-140.

intended to establish a team of experts; specifically, seven employees in the first year and ten employees by the fifth year. Her plan contained a profit and loss forecast and projected annual tax revenue between $77,700 in the first year and $140,615 in the fifth year. She also asserted that two companies have already sent her letters of interest regarding collaborating with her. The record also included the Petitioner's resume, financial statements, support letters from professional associates, letters from potential collaborators, and counsel-authored statements.

In denying the petition, the Director concluded that the Petitioner had not shown that her proposed endeavor was of national importance, that she was well-positioned to advance her proposed endeavor, and that on balance it would be beneficial to waive the job offer requirement for EB-2 classification. Regarding the first *Dhanasar* prong involving national importance, the Director found that the record contained insufficient evidence to demonstrate that the Petitioner's specific proposed endeavor had substantial positive national economic effects, such as by employing a significant population of workers. The Director also determined that although the Petitioner made claims of national importance in documents she and her attorney authored, she generally failed to support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). While the Director noted that the Petitioner had submitted evidence of the importance of her endeavor's goals of providing sustainable and affordable housing, this evidence did not show that her particular endeavor had national or global implications.

On appeal, the Petitioner argues that she has already submitted extensive documentation regarding the national importance of her proposed endeavor. She specifically contends that her professional plan demonstrates its substantial positive economic effects and that the Director erred in focusing on the immediate number of jobs her endeavor would create. The Petitioner also asserts that her endeavor will have impacts consistent with the current government's goals to address affordable housing and environmental sustainability. Finally, she claims that her work has had significant international influence in the field of sustainable architecture and has been widely cited and published.

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, we find that the Petitioner's reliance on the national importance of the goals her endeavor purportedly seeks to address is misplaced. The Petitioner contends that her proposed endeavor involves issues of national importance. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor without evidence documenting the "potential prospective impact" of a petitioner's work. The record does not contain sufficient evidence to conclude that the effects of the Petitioner's specific endeavor will rise to the level of national importance. Although the support letters in the record detail the Petitioner's past accomplishments and expertise, they do not offer evidence of the potential of her proposed endeavor to impact her field more broadly. We additionally acknowledge the letters from potential investors, but they do not include details regarding the financial commitment or other arrangements they intend to make.

In *Dhanasar*, 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. Such effects need not be national in scale but must demonstrate a potential prospective impact that is "substantial" to a particular area, region, or industry. The Petitioner renews claims on appeal that her company's profit margins and creation of new jobs, particularly in economically distressed areas in Florida, align with *Dhanasar* requirements. We acknowledge the details the Petitioner outlines in her business plan. However, the record does not sufficiently detail the basis for the Petitioner's financial and staffing projections. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

As a general matter, it is the Petitioner's burden to prove by a preponderance of evidence that she is qualified for the benefit sought. *Id.*, at 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* We acknowledge the Petitioner's references on appeal to previously submitted evidence. However, the Petitioner does not clarify how these documents establish her eligibility for the national interest waiver as claimed on appeal. Commensurate with the Petitioner's burden of proof is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014); *see also Adler v. Duval Cnty. Sch. Bd.,* 112 F.3d 1475, 1481 n. 12 (11th Cir. 1997) (noting in a civil case that, absent plain error, it is not the place of an appellate body to grant appellants relief "based on facts they did not relate"). As the Petitioner has not done so here, she has not sufficiently established that her proposed endeavor in the United States will have national importance under the first *Dhanasar* prong.

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining eligibility requirements for the requested national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

As 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.

ORDER: The appeal is dismissed.