U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32548210

Date: NOV. 04, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a quality control manager, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that that the Petitioner was well positioned to advance the proposed endeavor or that it would be beneficial to waive the requirements of a job offer. 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.

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. *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,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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. ADVANCED DEGREE

The Petitioner asserts that she qualifies for an advanced degree professional classification by virtue of foreign education that she claims is equivalent to a U.S. bachelor's degree and a U.S. master's degree, in accordance with 8 C.F.R. § 204.5(k)(3)(i). The Director determined that the Petitioner was a member of the professions holding an advanced degree. After reviewing the record, we disagree with the Director's determination.[2]

A petition for an advanced degree professional must include evidence that a petitioner possesses a "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." 8 C.F.R. § 204.5(k)(2). In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Moreover, any document in a foreign language must be accompanied by a full English language translation, and a certification from the translator that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

To demonstrate that she has the claimed degrees, the Petitioner submitted a copy of her original bachelor's degree diploma in linguistics, a copy of her original master's degree diploma in Human Resources, and the accompanying addendum for both degrees, along with translations for all the aforementioned documents. The petition did not contain the required certificate of translation for these documents.[3] As the academic records were not translated in accordance with the plain language requirements of 8 C.F.R. § 103.2(b)(3), they do not have any evidentiary weight and will not be considered. As the academic records are required to demonstrate a qualifying degree, the Petitioner has not demonstrated she has the requirements for the visa classification.

In light of the above, we disagree with the Director's conclusion that the Petitioner has established that she is an advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(3)(i).

III. NATIONAL INTEREST WAIVER

The remaining issue to be determined 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. For the

[2] The issue of the Petitioner's degree was not a ground of dismissal in the Director's decision. Nonetheless, we exercise "de novo review of all issues of fact, law, policy, and discretion" and on appeal look "at the record anew and [our] decision may address new issues that were not raised or resolved in the prior decision." *See generally AAO Practice Manual*, Ch. 3.4, https://www.uscis.gov/aao-practice-manual.

[3] The initial petition did have one certificate of translation, which listed numerous documents on it that the interpreter translated. However, the Petitioner's academic records were not included on that list.

reasons discussed below, we disagree with the Director that the Petitioner has sufficiently demonstrated national importance of her proposed endeavor. However, we agree with the Director that the Petitioner has not sufficiently demonstrated that she is well positioned to advance the proposed endeavor under the second prong of the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance

We disagree with the Director and hereby withdraw the Director's conclusion that the record established the Petitioner's proposed endeavor is of national importance under the first prong of the *Dhanasar* framework.[4] 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.

The record as currently constituted does not reflect how the endeavor would have a nationally important impact on the hospitality field or has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner's initial statement focused on the importance of her field, ignoring the requirement of *Dhanasar* that the endeavor's importance is determined by how the specific endeavor will impact the field on a level commensurate with national importance. *See Dhanasar*, 26 I&N Dec. at 889. The evidence does not support the Petitioner's contentions.[5] The articles and reports are of little evidentiary value as they do not address the Petitioner's specific proposed endeavor or how it would have broad implications in the hospitality field in a way that implicates national importance. The letters of recommendation speak to the Petitioner's past experiences and do not detail how the Petitioner's business will impact the industry on a nationally important level. Finally, the Petitioner's business plan does not explain how the included financial forecasts were calculated, or adequately clarify how the financial projections will be realized. The lack of supporting details detracts from the credibility and probative value of the business plan. Furthermore, the record does not illustrate how the projections in the business plan, would have substantial positive economic effects on the level of national importance.

Thus, we disagree with the Director's conclusion that the Petitioner has established that her proposed endeavor is of national importance.

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[4] This was not a ground of dismissal in the Director's decision. However, as noted previously we exercise "de novo review of all issues of fact, law, policy, and discretion" and on appeal look "at the record anew and [our] decision may address new issues that were not raised or resolved in the prior decision." *AAO Practice Manual, supra,* at Ch. 3.4.

[5] While we may not discuss every document submitted, we have reviewed and considered each one. We note that several pieces of evidence submitted in response to the request for evidence (RFE) originated after the filing of the petition. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(l), (12). Moreover, several documents lacked translations. As we noted in the prior section, foreign language documents must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). We can accord no weight to the documents that did not comply with this requirement.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

As outlined above, the Petitioner has failed to submit a certified translation of her academic record, as required by 8 CFR 103.2(b)(3). As such, the record does not establish whether her education supports her claim to be well positioned. Nevertheless, even if the Petitioner had established the authenticity of her education, she still has not demonstrated that she is well positioned to advance the proposed endeavor as she lacks experience in many of the functions of her proposed endeavor and has not demonstrated progress towards achieving the proposed endeavor.

The record demonstrates that the Petitioner had a successful professional career working in hospitality, but she has not shown that this work renders her well positioned to advance her specific proposed endeavor as the operator of a quality control consulting company. The Petitioner submitted evidence including several letters of recommendation, a business plan, her resume, training certificates, a job offer letter, and past work product.[6] Upon review of this evidence, we find it does not establish that the Petitioner is well positioned to advance her proposed endeavor.

The Petitioner lacks experience in many of the businesses in which she plans to act as an evaluator. According to her business plan, she intends to provide quality assurance reviews for hotels and restaurants, as well as retail spaces, museums, amusement parks, and travel agencies, which the business plan labels as the endeavor's "main clients." While the Petitioner's resume reflects that she has worked at hotels for about nine years in various capacities, with one and a half years in quality management, it does not reflect that she has any significant experience in retail spaces, travel companies, museums, or amusement parks. Moreover, the Petitioner has not indicated she has ever operated her own business. Furthermore, although the Petitioner has presented evidence that she has created a website for her business, she has not provided further evidence of her progress towards her proposed endeavor, such as any contracts, agreements, or client interest.[7]

The letters of recommendation complement the Petitioner's past work. For example, one of the letters from [redacted] the Petitioner's former boss, detailed the Petitioner's work as a quality manager and the efforts she introduced to the hotel to improve business. Nonetheless, this letter and the other letters do not demonstrate that the Petitioner has achieved a level of past success or progress that would render her well positioned to advance her proposed endeavor. They do not explain how the Petitioner's work has been implemented, utilized, or applauded by others in the hospitality field

[6] While we may not discuss every document submitted, we have reviewed and considered each one. As mentioned previously, several pieces of evidence submitted in response to the RFE originated after the filing of the petition. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(l), (12). Furthermore, we can accord no weight to the evidence lacking translations in accordance with 8 C.F.R. § 103.2(b)(3).

[7] We cannot consider the employment agreement, client interest letters, or subsequent presentations the Petitioner presented as they originated after the filing of the petition. 8 C.F.R. §§ 103.2(b)(l), (12).

outside of her past employers. Additionally, they do not illustrate that the Petitioner has any substantial experience outside the hotel industry.

Although the Petitioner submitted a business plan regarding her proposal, the plan lacks details and evidence to support its claims. The business plan states that the business has several current clients, including travel agencies, hotels, resorts, and restaurants, but does not provide evidence of the claimed client relationships. Moreover, the business plan makes various projections regarding expenses, revenue, and other financial matters. Nonetheless, the plan does not explain how these items were calculated, or adequately clarify how the revenue will be realized, nor does the record contain evidence to support the business plan's financial projections. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, the lack of supporting details detracts from the credibility and probative value of the business plan.

The Petitioner also provided a letter from Dr. [redacted] an assistant professor in marketing at [redacted] As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here the advisory opinion is of little probative value as Dr. [redacted] evaluation focuses almost entirely on the Petitioner's education and work experience in Russian hotels but neglects to sufficiently explain how her experience prepares her to provide consulting on a wide range of hospitality businesses and does not analyze what steps the Petitioner has taken to advance the proposed endeavor. Furthermore, it classifies the Petitioner's letters of recommendation from her work associates in Russia as being from "industry leaders" but does not provide evidence to explain or support this categorization.

Accordingly, we find that the record does not demonstrate the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the *Dhanasar* precedent decision and the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

We find that the Petitioner has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion, nor has she demonstrated eligibility for the requested visa classification.

ORDER: The appeal is dismissed.