U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34827884

Date: NOV. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 the Petitioner had not established eligibility for a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 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 establish eligibility for a national interest waiver, petitioners must demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. In addition, petitioners must show the merit of 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner intends to act as a Preschool Teacher and develop "a childcare center that offers a holistic approach to child development, combining techniques from pedagogy, play-based education, psychomotricity, and psychopedagogy." The Petitioner further indicated that she plans to leverage her expertise as a preschool teacher to offer educational consulting services to schools, teachers, and parents, as well as develop training programs.

In the decision, the Director concluded that the Petitioner had materially changed her proposed endeavor, from being a Preschool Teacher, to providing a business plan wherein she would open a business named [redacted] On appeal, the Petitioner contests the Director's conclusion, and states that the business plan provided in response to the request for evidence (RFE) was only expanding on her plan that was provided with her initial evidence. In our de novo review of the record, we agree with the Petitioner. The personal statement provided with her petition provided sufficient description of her endeavor beyond being a Preschool Teacher, and included the language quoted in the above paragraph regarding her intent to open a childcare center. As such, we withdraw the Director's determination that the Petitioner's proposed endeavor was materially changed with her response to the RFE. However, we do not find that the Petitioner has overcome the remainder of the Director's decision, as discussed below.

As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner established the substantial merit, but not the national importance, of the proposed endeavor. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889.

Although the Petitioner contends that she provided evidence of the importance of various topics regarding early childhood education, job training, and childcare, the matter here is not whether these topics, or similarly related subjects, are nationally important. Rather, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her services as preschool teacher through her company in the Massachusetts area. Likewise, her submission of articles covers a wide range of topics, such as those mentioned above, rather than establishing the national importance of her particular professional services or business.[2]

In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* 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

[2] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Petitioner also contends that her proposed endeavor "seeks to fill critical occupational voids within the educational sector." However, the alleged shortage of occupations or occupational skills does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner did not demonstrate how her business would largely influence the field and rise to the level of national importance. In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The record does not show through supporting documentation how her endeavor sufficiently extends beyond her prospective clients, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, while she provided a business plan for the proposed company, the Petitioner did not present any supporting evidence, corroborating the assertions and figures. Moreover, the Petitioner did not demonstrate how her business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan forecasts sales from $625K in year 1 to $4.8M in year 5, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the business plan claims the creation of 10 positions in year 1 to 22 positions in year 5, the Petitioner did not demonstrate the relevance of these numbers and show that such future staffing levels would provide substantial economic benefits to the Massachusetts region or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[3]

[3] *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 alternate issues on appeal where applicants do 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 the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.