U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34620702

Date: NOV. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a cosmetologist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 the record did not establish that the Petitioner is eligible for a waiver of the job offer requirement in the national interest. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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. 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,[3] 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 Director found that the Petitioner qualifies as an individual of exceptional ability in the sciences, arts, or business, and she is well positioned to advance the proposed endeavor.[4] The issue before us is whether the Petitioner has established that the remaining national interest waiver requirements have been met. The first prong of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance. The Director determined that the Petitioner's proposed endeavor has substantial merit. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner initially stated that she intends to "work as an independent contractor in the United States upon receiving all necessary business licenses . . . I have great interest from U.S. companies and persons who want to contract me as a [s]kincare consultant." The Petitioner provides in her business plan that her beauty salon will be in New York and will "become a licensed epicenter for aesthetic excellence, combining beauty treatments with health and wellness considerations . . . The salon will offer a comprehensive suite of services, including advanced skincare treatments, aesthetic enhancements, and wellness-oriented beauty consultations . . . focusing on personalized botox services, tailored to each client's individual skin condition, aesthetic goals, and lifestyle."

[3] *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).

[4] We will not address whether the Director correctly found that the Petitioner is an individual of exceptional ability and is well positioned to advance the proposed endeavor, as the determination that the proposed endeavor lacks national importance is dispositive of the appeal. *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 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).

In addition to the above-referenced documents, the record includes, but is not limited to, articles and industry reports about the field of cosmetology, education and training documents, a resume, and employer letters.

The Director found that the Petitioner did not establish that her proposed endeavor would sufficiently extend beyond her company and her clients or that her industry or field would be impacted more broadly. The Director stated that the Petitioner did not establish that her company would have significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area. The Director referred to the business plan and noted it does not establish employment of workers at a demonstrated rate of pay having substantial positive effects in New York or impacts on the cosmetology field more broadly. Finally, the Director mentioned that the Petitioner did not provide sufficient evidence of the prospective endeavor's potential prospective impact, including national or global implications within the field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, the Director concluded that the Petitioner did not establish the proposed endeavor has national importance.

On appeal, the Petitioner argues that the Director erroneously imposed a stricter standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not specifically identify statements in the Director's decision applying a higher standard of proof or imposing novel substantive and evidentiary requirements beyond those set forth in the *Dhanasar* framework.

The Petitioner next asserts that the Director did not address several pieces of evidence which establish, by a preponderance of the evidence, that the proposed endeavor has national importance. First, the Petitioner asserts that the Director overlooked industry reports and average salary information related to the importance of the cosmetology field. However, the issue here is not the national importance of the field, industry, or profession in which the individual will work; rather we focus on the "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889.

Second, the Petitioner states that the Director overlooked her certifications and letters of support. The record includes multiple letters of support discussing her work experience, as well as documentation of her educational background. The Petitioner's skills, knowledge, and prior work in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The first prong of the *Dhanasar* framework, however, focuses on the proposed endeavor and not on the Petitioner's education and prior work in the field. The national importance of the Petitioner's proposed endeavor stands separate and apart from her education, skills, and job experience.[5]

[5] *Id.*

Third, the Petitioner claims that the Director did not consider her business plan, which outlines staffing requirements and growth projections for the business that demonstrate potential to employ U.S. workers and substantial positive economic effects. She states that she will hire aestheticians, a receptionist/customer service representative, and a bookkeeper. The Petitioner mentions that the Director did not provide financial analysis in relation to the economic effects of her company and did not discuss evidentiary deficiencies. The Petitioner's business plan includes a discussion of the Petitioner's education and work experience, industry analysis, information about the company and its services, financial forecasts and projections, business strategies, and a description of company personnel. Regarding future staffing, the business plan provides that the Petitioner's company will employ aestheticians dependent on demand for services, a receptionist/customer service representative, and a part-time bookkeeper. The business plan anticipates that her company will employ 1 employee in year one, 4 in year two, 7 in year three, 9 in year four, and 11 in year five, but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. The total salaries expected by year five are $569,070. Furthermore, while her business plan offers revenue projections of $380,000 in year one, $615,000 in year two, $880,000 in year three, $1,800,000 in year four, and $1,500,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved. Based on the record, the Director properly found that the business plan does not establish employment of workers at a demonstrated rate of pay having substantial positive economic effects in New York or impacts on the cosmetology field more broadly.

The Petitioner has not established that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not demonstrated that her company's future staffing levels and business activity stand to provide substantial economic benefits in New York or the United States. Although the Petitioner claims that her company has growth potential, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.*

While the Petitioner's statements reflect her intention to provide cosmetology services to her company's future clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that 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. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its clientele to impact her field, the cosmetology industry, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner has not established that she meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, she has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the third prong outlined in *Dhanasar*. *See Bagamasbad*, 429 U.S. at 25; *see also L-A-C-*, 26 I&N Dec. at 526 n.7.

ORDER: The appeal is dismissed.