U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34815572

Date: NOV. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse practitioner, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that she merited a national interest waiver, as a matter of discretion, under the three-prong framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). 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.

On appeal, the Petitioner first highlights the fact that the Director did not provide an analysis of whether she met the requirements of the second and third prongs of the *Dhanasar* framework, asserting that she was not given "a fair opportunity to contest the decision" and that she "should be able to understand the grounds for denial clearly enough to be able to address these points" on appeal. She references *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). The Petitioner also references 8 C.F.R. § 103.3(a)(1)(i), which provides that an officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review.

Here, the Director addressed the Petitioner's eligibility under the first prong of *Dhanasar*, stating that because the record does not establish the national importance of her proposed endeavor, she has not demonstrated eligibility for a national interest waiver, and that further analysis of her eligibility under the second and third prongs would serve no meaningful purpose. By way of explanation, because the identified reasons for denial were dispositive of the Petitioner's appeal, remaining arguments concerning eligibility under the *Dhanasar* framework may be, and were, reserved. *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 an applicant is otherwise ineligible). The fact that the Petitioner was found ineligible under the first *Dhanasar* prong precluded her eligibility for a national interest waiver, regardless of her qualifications under the remaining prongs.

The Petitioner's second point on appeal turns generally to her eligibility for a national interest waiver. She submits evidence previously submitted, as well as documentation from 2024 showing her honor society membership induction. We observe that, because the honor society material post-dates the filing date of the petition, it is not relevant to demonstrating the Petitioner's eligibility, as this must be established at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. at 175 (Assoc. Comm'r 1998) (stating that a petition cannot be approved at a future date after the self-petitioner becomes eligible under a new set of facts). The Director concluded in the denial notice that the Petitioner did not establish the national importance of her proposed endeavor, and on appeal the Petitioner reiterates her purported qualifications and cites evidence previously included in the record. The Petitioner, however, does not address specific conclusions reached by the Director in determining that her proposed endeavor did not reach a level of national importance, nor does she articulate any erroneous conclusion of law or statement of fact in that determination.

We adopt and affirm the Director's decision. *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 that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director thoroughly reviewed, discussed, and analyzed the evidence of the Petitioner's proposed endeavor to operate a home healthcare business in the United States. In accordance with the framework for adjudicating national interest waiver petitions provided in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director considered how the evidence submitted served to establish whether or not the Petitioner's proposed endeavor had both substantial merit and national importance.[1] While the Director determined that the Petitioner's proposed endeavor had substantial merit, the Director properly concluded that the Petitioner's endeavor did not reach a level of national importance to warrant a waiver of the job offer requirement. As discussed, the Petitioner provides no indication on appeal as to why this determination on the part of the Director was in error.

[1] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on the three evidentiary prongs used to evaluate whether an individual qualifies for a national interest waiver.

In conjunction with the foregoing analysis, we adopt and affirm the Director's decision. The petition will remain denied.

ORDER: The appeal is dismissed.