U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33402527

Date: SEP. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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. 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 did not establish eligibility as an individual of exceptional ability or for a national interest waiver. 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 substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[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.

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

A. EB-2 Visa Classification

The Director determined that the Petitioner does not qualify as an individual of exceptional ability. Since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether she qualifies for EB-2 classification as an individual of exceptional ability for future consideration should the need arise.[4]

B. Substantial Merit and National Importance

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Id. at 889. 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. Id. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

We agree with the Director's conclusion that the proposed endeavor has substantial merit as it falls within the above-mentioned range of areas of substantial merit, namely health. Therefore, we will

[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] 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 alternate issues on appeal where an applicant is otherwise ineligible).

first identify the Petitioner's endeavor as shown in the record and then evaluate the Petitioner's evidence in support of the endeavor's national importance.

The Petitioner asserts that her proposed endeavor is to "direct the operations of an ergonomic and physiotherapeutic mattress and therapeutic-related products company in Florida," which will contribute to the treatment of people with comorbid conditions, the rehabilitation of war-injured soldiers, and reduction of work-related injuries and chronic conditions. She states that her company will be established in [redacted] Florida and "will function as an online store specialized in selling mattresses with vibro-massage, anatomical mats with heating and vibro-massage, and vibrating pillows with infrared heating." She further states that she will work "by importing products from Brazil to the USA and also exporting from the US to other countries. This selling opportunity has the potential to influence and impact the American market even in a global level." She maintains that her company "will focus on ensuring the bedtime comfort of its customers, by offering the main product, which is Physiotherapeutic equipment, mattresses and sleep-related events," with a goal of serving "all American citizens and residents experiencing back, spinal, and muscular pain by offering its products at affordable prices." She also maintains that her endeavor is "in alignment with the Biden-Harris Administration Initiative to improve healthcare" and "holds a direct connection to the STEM field due to its focus on developing personalized products with innovative mechanisms tailored to diverse physiological conditions." The Petitioner's business plan indicates that the company will have $1,221,797 in sales proceeds and have 20 employees by its fifth year.

On appeal, the Petitioner asserts that the Director erred by not considering "the relevance of the field of ergonomics as a matter of national relevance to the United States and how [her] endeavor contributes to it." She states that "ergonomic products, such as office furniture and equipment, contribute to improved comfort and reduced fatigue among workers. A more comfortable and ergonomically designed workspace can enhance productivity and efficiency in various industries, ultimately contributing to economic growth." She also contends that her endeavor "not only contributes to this aspect of a worker's daily life by being a company in the field, but her expertise in aligning industrial/fashion design to ergonomics can contribute to the development of this field, increasing American citizen's quality of life through her solutions."

Here, the Petitioner relies primarily on the importance of the ergonomics field as well as the growth of the ergonomic and physiotherapy products market. However, this misapplies the Dhanasar framework. 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 "the specific endeavor that the foreign national proposes to undertake." Dhanasar, 26 I&N Dec. at 889. 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. A local physical therapy business and a shortage of physical therapists in the United States does not render the proposed endeavor nationally important under the Dhanasar framework.

The Petitioner's business plan provides a generalized description of the company's marketing and growth strategy and projected sales; however, there is no explanation of the origins of the estimates or of how they were calculated. Broad statements and projections regarding the potential growth of the Petitioner's business and substantial positive economic effects that her business will produce, based

upon the growth of the ergonomic and physiotherapy products market within the United States, do not demonstrate the prospective impact directly attributable to her proposed endeavor or establish how her endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." Id. at 890. Further, although the Petitioner asserts that her online-based company will hire U.S. employees, she has not provided evidence to establish that she would employ a significant population of workers in that area, that the area in which the company will operate is economically depressed, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue.

Further, the Petitioner asserts that her company's customer representatives and sales representatives will "contribute to the development of education in the field of physiotherapy and ergonomics, considering that, although they do not require specialized academic background in this field, during these activities, the employees will be in constant contact with the principals of ergonomics . . . contribut[ing] to an exchange of knowledge and expertise in this field." However, she has not provided sufficient information and evidence to demonstrate the positive impact she may have in the field of physiotherapy. Likewise, while she maintains that her endeavor aligns with federal health initiatives, including the advancement of STEM fields and occupations, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would advance STEM fields or occupations or impact the field of STEM more broadly. Generalized conclusory statements that do not identify a specific impact to the field have little probative value,[5] and here, the Petitioner has not shown with sufficient evidence how her work with her prospective customers will impact the industry beyond the operations of her business. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. In the end, the economic benefits that the Petitioner claims will result from her endeavor depend on numerous factors and the Petitioner does not offer a sufficiently direct evidentiary tie between her proposed endeavor and the claimed economic results.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs.

ORDER: The appeal is dismissed.

[5] *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).