U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33402324

Date: SEP. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations 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 Texas Service Center denied the petition, stating that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director additionally determined that the Petitioner had not established that she is an individual of exceptional ability, nor that she is member of the professions holding an advanced degree as required for EB-2 classification. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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,[2] 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 concluded, among other findings, that the record did not establish that the Petitioner's proposed endeavor in the United States was of national importance. Based on our de novo review of the record, we agree with this conclusion.[3] Specifically, we find that that the Petitioner has submitted insufficient evidence regarding the substantive nature of her proposed endeavor such that she can establish that it meets the requirements of the first *Dhanasar* prong.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. 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.

On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner stated that her occupation was as a general and operations manager. With the petition, she submitted a professional plan and personal statement. She stated that she intended to continue her career in the United States by applying her project management and marketing communication strategies to "lead opportunities that encourage and strengthen entrepreneurship and innovation". The Petitioner went on to describe her academic and professional background and skills and achievements and how they support her goals. She contended that her proposed endeavor was to work as a general and operation manager. The Petitioner intended to act as a liaison between GovTech companies, accelerators, and governments to identify areas of opportunity and collaboration and develop strategies to facilitate technology transfer. She

[2] *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).

[3] As discussed here, we decline to reach and hereby reserve arguments concerning the Director's finding that she has not established eligibility for EB-2 classification. *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 the applicant did not otherwise meet their burden of proof).

asserted that she would work to "create an environment that supports developing and implementing cutting-edge technology in the public sector" by building relationships and facilitating communication in order to exchange information and best practices. The Petitioner stated that she intended to support the growth of start-up companies, enhance the quality of education and research at higher education institutions, build partnerships with institutions abroad, and leverage the latest technological advancements to drive innovation. She expressed her confidence that her assistance to entrepreneurs, businesses, academic institutions, and government agencies would drive the development of new products and services to support various sectors of the economy, including healthcare, energy, education, and finance. In response to a request for additional evidence, the Petitioner additionally claimed that she could train other individuals with her skills and knowledge.

On appeal, the Petitioner claims that she has submitted thorough and explicit evidence of her proposed endeavor and contends that the Director overlooked her previously-submitted evidence of eligibility for the requested petition. In support of her argument that her endeavor has national importance, she states that it is consistent with Biden Administration priorities such as the Investing in America agenda's focus on tech hubs and the importance of science, technology, engineering and mathematics (STEM) fields. She further asserts that her endeavor is directly related to fostering innovation and promoting entrepreneurship and that she is well-positioned to advance her endeavor.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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 economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

Here, the nature of the Petitioner's proposed endeavor is unclear. Although the Petitioner provided information about her professional interests and background, the Petitioner has not clearly explained her endeavor beyond generally continuing her career in the United States. For example, in the initial petition, the Petitioner indicated that she would act as a liaison between entrepreneurs, governments, and other entities. But she did not elaborate on whether she plans to do this by starting her own company, as a consultant to other companies, or as an employee of a company. In addition, while the Petitioner referred to providing support to a broad variety of these entities, she has not identified specific clients, partners, or employers with whom she would engage in this work. The Petitioner has not provided sufficient details about her intended projects, such as an operational plan, a timeline, or quantifiable business metrics. As a result of this lack of detail and specificity, which the Petitioner does not cure on appeal, we are unable to conclude that the Petitioner's proposed endeavor has national importance.

The record contains support letters from the Petitioner's professional associates regarding her qualifications and professional accomplishments. However, the Petitioner's skills, expertise, and abilities 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 issue here is whether the specific endeavor

she proposes to undertake has national importance under *Dhanasar*'s first prong. Importantly, evidence of the Petitioner's work history does not tell us what that her endeavor would be and whether that specific endeavor would have national importance.

Furthermore, we find that the Petitioner's reliance on the national importance of the goals her endeavor purportedly seeks to address is misplaced. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor without evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner contends that her proposed endeavor falls within a STEM profession, which should be taken into consideration in determining its benefits for the United States, and submitted industry reports and articles regarding technology, entrepreneurship, and the public sector. With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.[4] Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.[5] On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance.[6] Here, the Petitioner has not provided corroborating sufficient evidence to demonstrate that her endeavor has broad implications such that it would rise to the level of national importance.

It is the Petitioner's burden to prove by a preponderance of evidence that they are qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* We acknowledge the Petitioner's references on appeal to previously submitted evidence. However, the Petitioner does not clarify how these documents establish their eligibility for the national interest waiver as claimed on appeal. Commensurate with the Petitioner's burden of proof is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014); *see also Adler v. Duval Cnty. Sch. Bd.,* 112 F.3d 1475, 1481 n. 12 (11th Cir. 1997) (noting in a civil case that, absent plain error, it is not the place of an appellate body to grant appellants relief "based on facts they did not relate"). As the Petitioner has not done so here, she has not sufficiently established that her proposed endeavor in the United States will have national importance under the first *Dhanasar* prong.

The Petitioner additionally argues on appeal the Director's decision did not thoroughly assess the totality of the evidence, did not sufficiently explain the reasons for the denial, and used boilerplate language not specific to the Petitioner. We disagree. The Director's denial makes specific findings of fact and conclusions of law regarding the Petitioner's request for a national interest waiver and addresses each of its eligibility requirements. The decision also refers to, excerpts, and analyzes several pieces of evidence the Petitioner submitted below.

[4] *See generally* 5 USCIS Policy Manual D.2, https://www.uscis.gov/policymanual.
[5] *Id.*
[6] *Id.*

Finally, on appeal the Petitioner argues that she has established that she is a member of the professions holding an advanced degree due to her five years of experience after obtaining her bachelor's degree. She contends that the Director erroneously evaluated whether she was instead an individual of exceptional ability. We acknowledge this argument, along with evidence in the record submitted in support of the Petitioner's claim of eligibility for EB-2 classification according to the requirements for advance degree professionals at 8 C.F.R. § 204.5(k)(2). However, since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve this issue. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015). Moreover, for the same reason, we reserve the appeal arguments concerning the remaining eligibility requirements under the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.