U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33946100

Date: SEP. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the finance industry, 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, concluding that the record establishes the Petitioner is qualified for EB-2 classification but does not establish she is eligible for a national interest waiver as a matter of discretion. 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. 8 C.F.R. § 204.5(k)(2).

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. *Matter of Dhanasar*, provides the framework for adjudicating national interest waiver petitions. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *Dhanasar*

states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] 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.

Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner is an entrepreneur whose proposed endeavor is to start a business in the finance industry. The Director determined that the Petitioner established her eligibility for the EB-2 classification as a member of the professions holding an advanced degree. However, the Director concluded that the Petitioner did not establish eligibility for any of the three prongs of the *Dhanasar* framework, and therefore is not eligible for a national interest waiver as a matter of discretion. On appeal, the Petitioner contends that the Director erred in this finding. We disagree. The record does not establish the Petitioner's proposed endeavor is of national importance and therefore she is not eligible for a national interest waiver as a matter of discretion.

A. EB-2 Classification

The Director determined that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree based on her foreign equivalent degree and over five years of progressive experience. The Petitioner submitted diplomas and transcripts for her foreign degrees along with an academic evaluation stating that her two degrees are equivalent to U.S. bachelor's degrees in legal studies and business administration. The record contains a resume and contracts for employment with her current employer; however, the record does not contain letters from previous employers as evidence of her progressive experience in compliance with 8 C.F.R. § 204.5(g)(1). The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree but did not discuss the evidence in the record. However, as the record does not otherwise establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[2]

[1] *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).

[2] *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 an applicant is otherwise ineligible).

B. National Interest Waiver

1. Substantial Merit

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner states that her proposed endeavor has substantial merit as it will advance U.S. business and technology while specializing in real estate financing solutions for both American and international clients. The record includes information regarding the importance of financial services, and the impact of immigrants, entrepreneurship, and small businesses on the economy. We conclude that the proposed endeavor has substantial merit.

2. National Importance

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erroneously applying the law. She asserts the Director did not give "due regard" to the evidence submitted, specifically: the resume outlining her experience; the business plan describing her professional credentials, expertise, and accomplishments; evidence of her work in the field; letters of recommendation; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals with her profile in the field. Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did not demonstrate that she is eligible for a national interest waiver, as addressed below. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

While we acknowledge the Petitioner's experience in the field of the endeavor, her past experience does not establish national importance under the *Dhanasar* framework. The Petitioner states that she has over twenty years of experience in the field of the proposed endeavor through her education and her work. She also lists several courses she completed and states that, "[d]ue to the record of. . . business achievements and expertise . . . . [the Petitioner] is set up to help the U.S. stay competitive by bringing competitive services, helping develop the country, and providing income for the U.S. economy." In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. While past experience can be persuasive for prong two analysis, whether the Petitioner is well-positioned to advance the proposed endeavor, it does not establish the national importance of the proposed endeavor as it does not speak to the prospective impact of the proposed endeavor.

The record contains industry articles and reports on the current state of the finance field in the United States. However, 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." *Id.* at 889. Here, the Petitioner improperly relies upon the importance of the industry as sufficient to establish the national importance of her proposed endeavor. Without sufficient documentary evidence of the specific proposed endeavor's broader impact in the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework. In addition, the Petitioner submits articles on a shortage of workers in the finance industry. However, a shortage of qualified professionals does not render the work of an

individual nationally important under the *Dhanasar* decision. Here, the Petitioner has not established that her specific proposed endeavor stands to broadly impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Finally, the Petitioner asserts on appeal that her proposed endeavor is of national importance because of the importance of entrepreneurship, immigrants, and small businesses to the economy of the United States. While we acknowledge their collective impact, this does not further a claim that the Petitioner's specific proposed endeavor will have a broader impact to the field of finance. The record also contains an expert opinion letter that speaks to the proposed endeavor's impact; however, it restates many of the same claims already addressed above, speaking broadly of the finance industry, small businesses, and entrepreneurship. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established by a preponderance of the evidence that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.