U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23078107

Date: DEC. 21, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. *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 employment-based, "EB-2" immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. 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 that the Petitioner 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 did not state a conclusion as to whether or not the Petitioner qualifies for the underlying immigrant classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, regarding substantial merit and national importance, focuses on the specific endeavor that the foreign national 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Petitioner earned a Ph.D. in business administration from [redacted] University in [redacted] Georgia in 2015, and a master's degree in human resources from [redacted] University in 2018. The Petitioner's only stated employment experience is as manager of student affairs at [redacted] University [redacted] from 2009 to 2018. The Petitioner entered the United States in November 2018 as a B-2 nonimmigrant visitor for pleasure. When she filed the petition in May 2019, she did not indicate that she had been employed in the United States.

The only issue that the Director addressed in the denial is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. We will also briefly address the issue of eligibility for the underlying immigrant classification.

We agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework. For the reasons discussed below, the Director determined, and we agree, that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.[3]

When she filed the petition, the Petitioner stated: "I plan to offer my expert knowledge and qualification of an innovative management specialist and human resources expert to the field of small and medium enterprise in the U.S. . . . [M]y work is dedicated to provid[ing] . . . comprehensive, high quality services to small and medium enterprises." The Petitioner provided background information about the importance of small businesses, but did not offer any further details about her proposed endeavor.

The Director requested more details about the Petitioner's proposed endeavor, stating that the Petitioner did not "provide specific insight as to what she intends to do as a management specialist and human resources expert."

In response, the Petitioner stated that her "extensive knowledge and expertise will be beneficial to the development and enhancement of the small and medium enterprises in the U.S. as well as startups and women-managed companies." She stated that she would bring about these benefits, and "improve mental health and well-being of the American population," as an "online retailer of post cards, picture frames, gifts, and photo albums."

The Petitioner's initial submission included no mention of selling greeting cards and other products. In her newer statement, the Petitioner asserted that she "noticed an increase in demand for this type of service due to the social isolation cause by the [COVID-19] pandemic," which had not yet affected the United States when she filed the petition in May 2019.

[2] *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Here, the Petitioner has made a substantial material change to her petition, shifting her proposed endeavor from working as a "management specialist and human resources expert" to operating her own online store.[4] She registered her business in New Jersey as a limited liability company in June 2021, a month after the Director issued the request for evidence in May 2021. We will, nevertheless, address the national benefit of the revised proposed endeavor, because that issue formed the basis for the Director's decision.

The Petitioner asserts that an "online greeting cards business . . . helps alleviate certain risks related to COVID-19 and by decreasing individuals' feelings of loneliness and social isolation." The Petitioner asserts that her business will give "older adults . . . another creative way to communicate with their loved ones safely." The Petitioner cited no supporting evidence to establish that operating an online greeting card store would have national importance in this way.

An 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. *Matter of Dhanasar*, 26 I&N Dec. at 890. The burden is on the Petitioner to establish that the economic effects of her proposed endeavor are "substantial." In terms of economic effects, the Petitioner stated that she planned to hire eight employees by the company's fifth year of operations. The Petitioner did not explain how this level of projected employment represented significant potential to employ U.S. workers or would have other substantial positive economic effects.

In an advisory letter, an adjunct associate professor at [redacted] University of New York at [redacted] stated: "I am certain that [the Petitioner] will be invited to participate" "as a speaker in important entrepreneurship events in the United States," owing to her "unique knowledge and experience." The writer indicated that the Petitioner "has demonstrated a remarkable record of specific achievements as a Chief Executive" and an "exceptional track record of experience as a Chief Executive," but he did not elaborate or even identify any company where the Petitioner had previously served as a chief executive. The record does not indicate that the Petitioner had ever served as a chief executive before the September 2021 date of the advisory letter.

The writer described the Petitioner as "a seasoned Entrepreneur with expertise in the online greeting cards sector," but he did not describe any past experience or training that the Petitioner has in that field. The writer did not indicate that the Petitioner's newly claimed greeting card business was already active. Rather, he stated that the Petitioner "will establish" the company "[u]pon being granted permanent residency."[5]

[4] In January 2022, the Petitioner filed a second petition, with receipt number [redacted], in which the proposed endeavor included the online store from the time of filing. That petition was approved in June 2022. Because that petition is a separate proceeding that is not before us on appeal, we will not comment on its merits in this decision. The approval of the January 2022 petition does not entitle the Petitioner to a 2019 priority date from the petition now before us on appeal. A denied petition will not establish a priority date. 8 C.F.R. § 204.5(e)(3).

[5] The Petitioner registered the company in June 2021, but she did not submit evidence that the company has begun doing business.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support an individual's eligibility. *Id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.*; *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

In this instance, the submitted letter is questionable because it includes general references to expertise and experience as an executive and as a greeting card entrepreneur, without citing to any evidence that the Petitioner actually possesses that expertise or experience.[6] The Petitioner claims no such experience prior to filing the petition, and the card business was not part of her proposed endeavor when she first filed the petition. The writer stated that the evaluation is "based on documents provided by [the Petitioner] as well as information based on [the writer's] own research," but again he did not elaborate with details about the provided documents, the nature of his research, or what he learned from that research.

A business plan in the record appears to be based on a general template. The business plan states that the Petitioner's company "prides itself on establishing and maintaining strong relationships with suppliers," but, as noted above, there is no direct evidence that the company has begun operations or that, as of late 2021, it had any such relationships to maintain.[7]

The Director denied the petition, stating that the Petitioner had not established the economic impact of the planned employment of eight individuals, and that the advisory letter did not suffice to meet her burden of proof.

The appellate brief does not directly address the Director's specific conclusions. Instead, the brief repeats, verbatim, a statement originally submitted in response to the Director's request for evidence, with an added concluding sentence that reads: "Therefore, USCIS erred in finding that the Petitioner has not established that the proposed endeavor is of national importance." Accordingly, the brief does not directly address the stated grounds for denial, or establish that the Director erred in that decision.

In light of the above conclusions, the Petitioner has not met her burden of proof to establish that she meets the first prong of the *Dhanasar* national interest framework. Detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion.[8]

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[6] If this decision had included discussion of whether the Petitioner is well-positioned to advance the proposed endeavor, her evident lack of relevant experience would have been a significant factor in such discussion.

[7] The business plan is a draft document, with a comment box indicating a correction to the text on page 29. Repeated formatting errors appear to be consistent with the insertion of the Petitioner's name, and that of her new company, into pre-existing template text. The plan was prepared specifically to support the petition; the phrase "EB-2 Visa Supporting Documentation" appears on the cover page.

[8] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

III. ADDITIONAL ISSUE

In the decision notice, the Director focused entirely on the national interest waiver, and did not address the issue of the Petitioner's eligibility for the underlying immigrant classification. On appeal, the Petitioner states that she "qualifies as a holder of an advanced degree." The statute, however, does not refer to *holders* of an advanced degree. Rather, one must be either an individual of exceptional ability or a *member of the professions* holding an advanced degree.

The regulations define a profession as one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),[9] as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2). The Petitioner has abandoned her original plan to work as a "management specialist and human resources expert," and she has neither shown nor claimed that operating an online store requires at least a bachelor's degree. For example, the Petitioner has not identified any licensing board or other authority that would prevent a person without such a degree from establishing and operating such a store.

Therefore, the Petitioner has not met her burden of proof to establish that operating an online store qualifies as a profession, as the statute and regulations require.

An individual may also qualify for classification under section 203(b)(2) of the Act as an individual of exceptional ability. An introductory statement from counsel briefly describes the evidentiary requirements to establish exceptional ability, but neither counsel nor the Petitioner actually claims that the Petitioner meets those evidentiary requirements, or explains how she meets them. As such, the Petitioner has made no claim to qualify for classification as an individual of exceptional ability.

Because the Petitioner has not established that she is a member of the professions, and has put forward no specific claim of exceptional ability, she has not met her burden of proof to establish that she qualifies for classification under section 203(b)(2) of the Act.

IV. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion. Furthermore, the Petitioner has not established that she qualifies for the underlying immigrant classification. We will dismiss the appeal for these reasons.

ORDER: The appeal is dismissed.

[9] The listed occupations are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."