U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22221372

Date: JAN. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, 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 did not establish that a waiver of the job offer requirement would be in the national interest. 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.

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. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish 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[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.

II. ELIGIBILITY FOR THE EB-2 CLASSIFICATION

The Director did not include a determination of the Petitioner's eligibility for the EB-2 classification in his decision. Although the Petitioner initially claimed eligibility as an individual of exceptional ability, on appeal she states that she qualifies as a member of the professions holding an advanced degree. The record includes a copy of her diploma from [redacted] School of Engineering in Brazil, awarding her the title of engineer, as well as an academic evaluation concluding that this degree is the equivalent of a bachelor's degree in civil engineering from an accredited institution in the United States. In addition, the Petitioner submitted letters from three former employers documenting her employment as an engineer for at least five years after she earned her degree. This evidence establishes her qualification as a member of the professions holding an advanced degree, and therefore her eligibility for the EB-2 immigrant visa classification.

III. NATIONAL INTEREST WAIVER

The Petitioner initially indicated that her proposed endeavor would be to "continue working as a Civil Engineer with multi-national companies in the U.S., providing indispensable guidance regarding cross-border transactions involving the development of different projects in Brazil." In response to the Director's notice of intent to deny (NOID), the Petitioner submitted a second statement in which she proposed to work as an entrepreneur and CEO of her own company that would provide construction management services for construction of buildings, landscaping, and inspection and maintenance. She also indicated that she would seek out infrastructure projects with government agencies in the United States, referencing the current administration's infrastructure investment plan, and provided evidence that she formed a company in Florida approximately two weeks after receiving the NOID.

The purpose of a NOID is to notify a petitioner of USCIS' intent to deny a benefit request and explain the reasons for that, and to allow for a limited period for response, which may include additional evidence. 8 C.F.R. §§ 103.2(b)(8) and (11). Here, the Petitioner's initial description of her proposed endeavor did not include plans to form her own company as an entrepreneur or managing that company as its CEO. The Petitioner has not shown that working for a company to provide guidance on construction projects in Brazil and forming and managing her own company are the same endeavor. We conclude that the NOID response presented a new set of facts regarding the Petitioner's proposed endeavor, which is material to her eligibility for a national interest waiver. A petitioner must meet eligibility requirements for the requested benefit at the time of filing the petition. 8 C.F.R. §

[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).

103.2(b)(1). The Petitioner's plans to establish a new company and perform services as a CEO for this entity formed after the filing date cannot retroactively establish eligibility. A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

A. Substantial Merit and National Importance

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

As noted above, the Director notified the Petitioner that she had not established that her initial proposed endeavor was of national importance. While she initially submitted evidence including reports about civil engineers in general and the state of the construction industry in the United States, this evidence did not concern her specific endeavor of providing guidance to U.S. companies regarding construction projects in Brazil. 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." *See Dhanasar*, 26 I&N Dec. at 889. In addition, we indicated 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.

In response to the NOID, the Petitioner did not submit additional evidence or arguments in support of her initial proposed endeavor, but instead proposed a new endeavor which constituted an impermissible material change to her petition. However, even if the Petitioner had submitted evidence regarding her proposal to start and manage her own business with her initial filing, we agree with the Director and conclude that the record does not sufficiently demonstrate the national importance of this endeavor.

We first note that although the evidence, which includes a business plan for the Petitioner's newly created company, makes several references to the Biden administration's infrastructure plan, it does not provide information regarding any specific infrastructure projects, or even the type of infrastructure projects, in which the company would be engaged in managing. It therefore does not demonstrate the potential implications of any work related to infrastructure which might be conducted by the company.

The Petitioner also asserts in both her NOID response and on appeal that her proposed endeavor will "lead to an enhanced and improved construction and development," "generate both economic and social value for the United States," and "result in the production of U.S. jobs." Regarding the first point, she goes on to state that she "offers innovations and improvements of broad implications to the United States," and refers to her statement submitted in response to the NOID. While that statement

indicates that her work will "contribute to access to innovation," it does not describe the ways in which her endeavor or her company will create and deploy innovations that will have broader implications for the construction industry in the United States. While the plan describes the use of existing computer technology and social media to advance the Petitioner's business, it does not demonstrate that these practices would impact the field beyond the company and its clients.

As for the economic value and job creation that the Petitioner asserts her company will offer, the business plan includes projections of more than $800,000 in net income by the fifth year of operation and the creation of 44 direct jobs in that same timeframe. However, the plan does not provide sufficient detail of the basis for these projections, or adequately explain how these income and staffing targets will be realized. It therefore does not demonstrate that the Petitioner's business will have an impact on the construction industry or the U.S. economy at a level commensurate with national importance. In addition, the record does not indicate that the location of the business and its proposed operations is an economically depressed area, or that the endeavor would otherwise have substantial positive economic effects.

The Petitioner's initial proposal, to work for a company in the United States to provide guidance regarding construction projects in Brazil, was not supported by sufficient evidence of its national importance under the first prong of the *Dhanasar* analytical framework, and the Petitioner abandoned this proposed endeavor in favor of a completely different one when responding to the Director's NOID. While this was an impermissible material change to the petition, the evidence submitted in support of this new endeavor also would not have sufficiently established its national importance. We therefore conclude that the Petitioner has not established that has satisfied the first prong.

IV. CONCLUSION

As the Petitioner has not established her eligibility under the first prong of the *Dhanasar* framework, she is not eligible for and does not merit a national interest waiver. While she asserts on appeal that she meets the second and third *Dhanasar* prongs, we will reserve these issues.[2] The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[2] *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).