U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24807353

Date: MAR. 9, 2023

Appeal of Texas Service Center Decision

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

The self-Petitioner, a general and operations manager, seeks immigrant visa classification as a member of the professions holding an advanced degree and a waiver of the category's normal job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to forgo the requirement if a waiver is "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. While finding the Petitioner qualified as an advanced degree professional, the Director concluded that she did not demonstrate her proposed U.S. employment to be in the national interest. On appeal, the Petitioner contends that the Director overlooked evidence and misapplied the standard of proof.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the Petitioner has not demonstrated the "national importance" of her proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a noncitizen petitioner must first demonstrate their qualifications for the underlying immigrant visa category, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. In this category, a U.S. employer must normally seek a noncitizen's services and obtain U.S. Department of Labor certification to permanently employ them in the country. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). To avoid the need for a job offer/labor certification, a petitioner must demonstrate that waiving the requirement is in the national interest. Section 203(b)(2)(B)(1) of the Act.

Neither the Act nor regulations define the term "national interest." But we have established a framework for adjudicating requests for national interest waivers. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). If a noncitizen otherwise qualifies as an advanced degree professional or

an individual of exceptional ability, USCIS may waive the job-offer/labor certification requirement if the petitioner establishes that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their proposed endeavor; and
- On balance, a waiver of the normal job-offer/labor certification requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner, a native and citizen of Brazil, earned a university degree in business management. Since 2006, she has served as an administrative manager of an agricultural business in her home country.

In her initial filing, the Petitioner proposed using her business knowledge and experience to help U.S. companies improve their operations. The Director issued a request for additional evidence (RFE) regarding the proposed endeavor. In response, the Petitioner stated that she would manage and operate her own food supply company in the United States, specializing in frozen food. Although the initial filing did not mention her proposed operation of a food company, the Director based his decision on her later plan to start the U.S. business. On appeal, the Petitioner states that her proposed endeavor involves both establishing the U.S. business and helping U.S. companies.

A. The Proposed Endeavor

A petitioner must establish their eligibility for a requested benefit "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (requiring a noncitizen to qualify for a proposed job by the time of a petition's filing). A petitioner also may not materially change a petition after its filing. *Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998).

For the reasons stated in *Katigbak* and *Izummi*, the Director should have based his decision on the Petitioner's initial proposed endeavor. But, because the Director's decision addresses the Petitioner's second proposal and the Director's RFE notified her of deficiencies in her initial plan, we will address both proposed activities on appeal. Thus, we will consider her plans to help U.S. businesses improve their operations and her proposed operation of her own frozen-food company.

B. Advanced Degree Professional

The record supports the Director's finding that the Beneficiary qualifies under the requested immigrant visa category as an advanced degree professional. She submitted evidence that her proposed profession requires an "advanced degree" or its equivalent. *See* 8 C.F.R. § 204.5(k)(4)(i). She also demonstrated the equivalency of her Brazilian bachelor of business degree to a U.S. baccalaureate in business administration and her possession of more than five years of post-baccalaureate, progressive experience in business administration. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced

degree" to include a foreign equivalent of a U.S. bachelor's degree followed by at least five years of progressive experience in a specialty).

C. Substantial Merit

To determine whether a noncitizen's proposed U.S. work has substantial merit, USCIS focuses on the specific, planned endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 889. Petitioners may demonstrate merit in a variety of fields, including business and entrepreneurialism. *Id.* USCIS favorably considers "[e]vidence that the endeavor has the potential to create a significant economic impact." *Id.* Endeavors related to research, pure science, and furtherance of human knowledge may qualify even if they would not create U.S. economic benefits. *Id.*

The Petitioner contends that her proposed frozen-food business would generate U.S. jobs, improve wages and working conditions of U.S. workers, and help the local community attract investments. She submitted a business plan stating that her company would begin business with two employees and, by its fifth year of operation, employ five workers and generate revenue of $300,000. The Petitioner also asserts that her plan to help U.S. businesses would have a "substantial ripple effect" on the nation's commercial activities and help position the country as a "business hub within the global economy."

The record includes letters from Brazilian business owners indicating the Petitioner's ability to increase business revenues while simultaneously decreasing costs. She also submitted a letter from a U.S. university professor of business management stating that the Petitioner's business experience and knowledge of Brazil would benefit U.S. companies doing - or planning to do - business there. Thus, the record indicates that the Petitioner's plans have potential economic benefits. Her proposal therefore has substantial merit.

D. National Importance

In determining whether proposed work has national importance, USCIS considers "its potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. A proposal may have national importance if it has national or global implications within a particular field. *Id.* An endeavor may also have national importance if it "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance." *Id.* at 890.

The record does not sufficiently demonstrate the purported national importance of the Petitioner's plan to establish a frozen-food business. As the Director found, the Petitioner's five-year projections of five workers and $300,000 in revenues does not indicate that the business would have a significant national or regional impact. She has not specified all the positions or wage rates of the proposed employees. Also, the record does not sufficiently demonstrate "other substantial positive economic effects" of the proposed business.

The Petitioner asserted her intent to locate the frozen-food business in an area the U.S. Small Business Administration (SBA) has designated a "HUBZone." Under the HUBZone program, the U.S. government seeks to fuel small business growth in historically underutilized areas, with a goal of annually awarding at least 3% of federal contract dollars to HUBZone-certified companies. SBA,

"HUBZone Program," https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program. The record, however, lacks supporting evidence establishing the inclusion of the Petitioner's proposed business in a HUBZone. Thus, the Petitioner has not demonstrated the location of her proposed business in an underutilized business zone.

Although the Petitioner contends that her plan to help U.S. businesses would have a "substantial ripple effect" on the nation's commercial activities, she has not demonstrated that she would improve enough U.S. businesses to make an economic impact of regional or national importance. On appeal, she states that this part of her endeavor "involves working for any company or individual in need of her services." But the record does not explain whether, like a consultant, she would contract her services to U.S. businesses, or simply apply for employment with U.S. companies. The plan's lack of detail, in part, prevents it from demonstrating national importance.

The Petitioner also has not established the amount of time she would devote to the proposed endeavor. On her Form I-140, Immigrant Petition for Alien Worker, she attested to the "full-time," "permanent" nature of her intended work. But, although now in the United States, she states that she: continues to work for the Brazilian agricultural business as an administrative manager; owns and manages another Brazilian business; and owns and operates a U.S. food company. The Petitioner has not explained whether she would continue all these business activities if granted a national interest waiver. This unresolved issue casts doubt on the amount of time she would devote to her proposed U.S. endeavor and thus the potential economic impact of the activities on the United States. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record).

For the forgoing reasons, the Petitioner has not demonstrated that her proposed U.S. employment has national importance. We will therefore affirm the petition's denial.

As the Petitioner has not met *Dhanasar*'s first national-interest prong, we need not consider her eligibility under the two remaining criteria. *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) ("[A]gencies are not [generally] required to make findings on issues the decision of which is unnecessary to the results they reach.") We will therefore reserve consideration on the remaining national interest prongs.

III. CONCLUSION

The Petitioner has demonstrated her qualifications as an advanced degree professional and the substantial merit of her proposed work in the United States. The record, however, does not establish the national importance of her proposed endeavor. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.