U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28051961

Date: SEPT. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of culinary arts, seeks second preference 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 EB-2 classification. 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 although the Petitioner qualified as an advanced degree professional, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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[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.

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[1] 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).

[2] *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).

The Petitioner proposes to continue to grow her high-end bakery specializing in custom cakes and sweets in Florida. She further states that her "company will specialize in supporting U.S. and foreign companies by responding to [the] fast-growing product segment of the cake market."

The first prong of the *Dhanasar* framework, 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.

In her decision, the Director determined that the Petitioner's proposed endeavor is of substantial merit, and we agree. Turning to the national importance of her endeavor, the Director concluded that the Petitioner did not establish that her proposed endeavor has national importance.

On appeal, the Petitioner contends that the Director did not give due regard to her resume; business plan; letters of recommendation; expert opinion letter; and industry reports and articles. In addition, the Petitioner relies, in part, on her 16 years of experience as an entrepreneur to establish the national importance of her proposed endeavor. However, the Petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of her proposed work.

The Petitioner also points to the staffing and revenue projections from her business plan, which project that the company will directly employ 40 full-time employees within five years and during that period, cumulatively pay wages of over $1.2 million and contribute over $1.5 million in tax revenue to the economy. Importantly however, these employment and revenue projections are not supported by details showing their basis or an explanation of how they will be realized, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Specifically, the record does not support that the direct creation of 40 additional full-time jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. While the Petitioner submitted industry data showing the economic impact of baking in Florida, she has not demonstrated how her business will have substantial positive economic effects on this sector, which generates billions of dollars in revenue and employs over 33,000 workers.

We have also considered whether the Petitioner's proposed endeavor will have broader implications in her field or industry. In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Likewise, the Petitioner has not established how her independent bakery stands to sufficiently extend beyond her customers to impact the culinary arts industry more broadly at a level commensurate with national importance.

Moreover, we reviewed the Petitioner's letters of recommendation from her professional acquaintances. The authors praise the Petitioner's abilities as an entrepreneur and the personal attributes that make her an asset to the workplace. While the recommendation letters evidence the high regard the Petitioner's professional acquaintances have for her and her work, none of them offer

persuasive detail concerning the impact of the Petitioner's proposed endeavor or how such impact would extend beyond her customers. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from a university professor in the marketing field. In addressing the first prong of the *Dhanasar* framework, the author emphasizes that the Petitioner will contribute to the food service industry in the United States. However, the expert opinion letter is very general, significantly focuses on the importance of the overall food service industry and the impact immigrants play in the U.S. economy, and does not address the Petitioner's five-year business plan, the specific proposed endeavor described therein, its prospective substantial economic impact, or any broader implications of her intended business in the field of culinary arts.

We observe that USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *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). Here, much of the content of the expert opinion letter lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs, and we hereby reserve them.[3] The burden of proof is on the Petitioner to establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).