U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30586822

Date: APR. 30, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a communications specialist in the film and television industry, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's 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 excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Nebraska Service Center denied the petition. The Director found the Petitioner qualified for the requested EB-2 category as a member of the professions holding an "advanced degree." *See* section 203(b)(2)(A) of the Act. But the Director concluded that the Petitioner did not demonstrate the merits of a national interest waiver. On appeal, the Petitioner contends that the Director overlooked "vital evidence" and misapplied law. She argues that: her proposed endeavor has "national importance;" she is "well positioned" to advance it; and, overall, the United States would benefit from a waiver.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *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 did not establish the claimed national importance of her proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as advance degree professionals or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ the individuals in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor

certification requirements by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

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

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016).

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Chinese native and citizen, earned: a bachelor's degree in journalism from a Chinese university in 2014; a master of arts degree in global communications from a U.S. university in 2016; a master of science degree in global media and communications from a United Kingdom (U.K.) university in 2017; and a master of fine arts degree in craft editing from another U.K. university in 2022. Since 2016, an entertainment marketing agency has employed her in the United States as a communications specialist. She helps create promotional videos and behind-the-scenes documentaries for major Hollywood studios. In 2021 and 2022, she received silver [redacted] Awards for her work as a video editor.

The Petitioner states that she seeks to continue her video editing work in the United States. She states that she would "creat[e] visual stories to energize, entertain, and inform audiences while enabling filmmakers and film studios to achieve commercial success."

B. EB-2 Qualifications

The record supports the Director's finding that the Petitioner qualifies for EB-2 classification as an advanced degree professional. She documented her receipt of a U.S. master's degree in a relevant field. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate").

C. Substantial Merit

A proposed undertaking may have substantial merit whether it "has the potential to create a significant economic impact" or relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director found that the Petitioner's proposed work has substantial merit. The record indicates that her endeavor could generate additional revenues and jobs in the film and television industry. We therefore agree that her proposed work has substantial merit.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "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." *Id.*

The Director found that the Petitioner did not demonstrate the claimed national importance of her proposed endeavor because her work would "primarily serve to benefit her employer and its clients." The Director found that she did not establish that her work would advance her field or boost the nation's economy broadly enough. The Director stated: "[T]he benefits provided by a single communications specialist are too attenuated to have national importance."

On appeal, the Petitioner contends that the benefits of her work would extend beyond her employer and its clients. She states that the U.S. film and television industry supports 2.4 million jobs, pays $186 billion in wages, and includes more than 122,000 businesses across the country. The Petitioner states: "Entertainment marketing agencies and their creative talent are essential to maintaining and growing the strength of the U.S. film industry."

But, as previously indicated and as the Director found, USCIS must focus on the *particular* proposed venture when considering an endeavor's national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). We acknowledge that the U.S. film and television industry generates significant revenues and jobs. But the Petitioner has not demonstrated that her *particular* work would benefit the field or the country's economy at a nationally important level.

The Petitioner states that $35.9 million of an average film's $106.6 million budget funds advertising to distribute the movie. She argues that, even if her work increases a film's box office revenue by only 1%, "it is still a significant amount that constitutes substantial positive economic impact."

The Petitioner, however, has not sufficiently demonstrated that her video editing work increases a film's likelihood of generating profits. Thus, we do not accept her argument's premise or find the argument persuasive.

The Petitioner contends that her work "can also further deepen the audience's understanding of the intellectual properties (IP) embedded in these movies (superhero characters, comic universes, animation franchises, etc.), strengthening [the audience's] emotional investment into these IPs." She

argues that the IPs and the audience's emotional attachments to them lead to "merchandise sales, amusement park experiences, and partnerships with other product lines." The Petitioner further contends that her work would:

- indirectly create jobs in industries closely connected to her field, such as: design and construction; fashion; merchandise; print and online media; entertainment; and tourism;
- increase exposure of other specialized film professionals, such as: set designers; costume designers; and visual effects experts; and
- contribute to cultural and artistic enrichment, social cohesion, and well-being.

These claims may be true. But the Petitioner has not demonstrated that the scope of her proposed work would generate these benefits at nationally important levels.

The Petitioner's proposed venture reminds us of one we rejected for a national interest waiver in *Dhanasar*. There, we found that a proposal to teach science, technology, engineering, and mathematics (STEM) courses at a U.S. university had substantial merit. *See Matter of Dhanasar*, 26 I&N Dec. at 893. But we concluded that the venture lacked national importance. *Id.* We found that "the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.* The Petitioner's proposed endeavor also has substantial merit. But, like the petitioner in *Dhanasar*, she has not established that her work would advance her field or boost the U.S. economy "more broadly."

The Petitioner has not demonstrated that her proposed endeavor has national importance. We will therefore affirm the petition's denial.

E. The Remaining Waiver Requirements

Our decision regarding the national importance of the Petitioner's proposed venture resolves this appeal. Thus, we decline to reach and hereby reserve consideration of her appellate arguments regarding her positioning to advance the venture and a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate appellate issues where a noncitizen did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has not established the claimed national importance of her proposed endeavor. Thus, under our *Dhanasar* framework, she does not qualify for a national interest waiver. We will therefore affirm the petition's denial for lack of a job offer.

ORDER: The appeal is dismissed.