U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34632904

Date: DEC. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a financial specialist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Applicant had shown eligibility for EB-2 classification. The matter is now before us on appeal pursuant to 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.

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *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.

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

Id.

The Petitioner, a citizen and national of Brazil, seeks EB-2 classification as an individual of exceptional ability and a waiver of the job offer and labor certification requirements for that classification based on the national interest. She states that she intends to open a financial consulting organization in the United States. She asserts that her financial consulting organization would offer a wide range of services for individuals and organizations that would aide in stimulating both the local and national economy.

The Director determined that the Petitioner had not provided sufficient evidence to support her claim that her proposed endeavor had substantial merit and national importance. The Director concluded that the Petitioner had not established the endeavor would have the economic impact required to rise to the level of national importance. Moreover, the Director determined that the Petitioner provided only general statements regarding her proposed activities and their potential effects in her field of endeavor.

On appeal, the Petitioner argues that the Director did not consider the evidence provided that supports her claim of substantial merit and national importance. She states that her proposed endeavor to operate a financial consulting business is of substantial merit because it would stimulate economic activity and provide employment to the people she hires. The Petitioner has established the substantial merit of her endeavor on appeal. However, we adopt and affirm the Director's decision as it relates to national importance. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

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. *Id.* at 889.

The Petitioner's business plan anticipates that the Petitioner's company will reach a total of 19 employees in year five, with payroll expenses growing from $311,000 in year one to $1.1 million in year five. She also projected generating $455,000 in revenue in year one, increasing to $1.5 million in year five. Nonetheless, the plan does not explain how these forecasts were calculated, or adequately clarify how these projections will be realized, nor does the record contain evidence to support the business plan's financial projections. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, the lack of supporting details detracts from probative value of the business plan.

Even if we assumed all the projections in the business plan were accurate, the record lacks evidence demonstrating that its impact would be nationally important. On appeal, the Petitioner contends that her business will "introduce innovative financial analysis techniques and personalized planning services." She further states that she wants to "set new industry standard" that could lead to "advancements in financial management practices." Yet the Petitioner did not provide documentation to support these statements or to show that the company will result in substantial economic growth on the level of national importance. The record does not illustrate how creating 19 jobs and generating $1.5 million in revenue as projected in the business plan would have substantial positive economic effects on the level of national importance. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has therefore not provided sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rises to the level of national importance or that her influence would reach beyond her clients and employees. The remainder of the Petitioner's arguments on appeal center on her past professional success and the statements provided by colleagues about her prior work. These statements are more applicable to the second prong of the *Dhanasar* framework than to the national importance of her proposed endeavor. Accordingly, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance.

Because the identified basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility for EB-2 classification as a person of exceptional ability and under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for, or otherwise merits, a national interest waiver.

ORDER: The appeal is dismissed.