U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29813427

Date: FEB. 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a permanent makeup artist, trainer, and salon owner, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. Immigrant and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. While neither 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 and states that USCIS may, as a matter of discretion, grant a petition if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and, (3) on balance, waiving the job offer requirement would benefit the United States.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she is an individual of exceptional ability or that a waiver of the job offer requirement is 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.

Regarding the Petitioner's claimed qualification as an individual of exceptional ability, the Director concluded that the Petitioner established only two of the six regulatory criteria used in the initial step of the exceptional ability analysis.[1] The Director therefore concluded that the Petitioner did not establish eligibility for the EB-2 classification.

[1] "Exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). An individual must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does demonstrate meeting at least three criteria, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the individual is recognized

As to the first *Dhanasar* prong, the Director concluded that the Petitioner's proposed endeavor to operate an aesthetic beauty salon and training center has substantial merit but not national importance. The Director thoroughly reviewed and discussed the evidence in the record and why it is insufficient. For example, the Director found that the letters of support primarily focus on the Petitioner's own background and qualifications, rather than the actual proposed endeavor. Therefore, the Director concluded, the letters primarily relate to the second prong of the *Dhanasar* framework, which shifts the focus from the proposed endeavor to the petitioner and whether they are well-positioned to advance it. The Director also acknowledged that the record contains many articles about broad, general matters such as talent shortages, business management, and the positive impact of immigrants and entrepreneurs on the economy. However, the Director concluded that this general evidence is insufficient to establish the national importance of the Petitioner's specific, proposed endeavor.

Additionally, the Director found that the Petitioner's proposal for a project to provide services free of charge to cancer patients—a project which was discussed in response to the Director's request for evidence (RFE)—was a materially changed aspect to the proposed endeavor that was not part of the endeavor as described in the initial petition. As such, the Director decided, the project would not be considered in analyzing the endeavor's national importance, because a petitioner must establish eligibility at the time of filing, and USCIS does not consider material changes made to a petition after its filing.[2] Finally, the Director concluded that the evidence did not demonstrate the potential for substantial positive economic effects, finding that the Petitioner did not sufficiently establish the basis for the revenue and staffing projections contained in the impact analysis report, nor discuss how those impacts would be achieved, nor whether she would pursue her endeavor in an area that is economic depressed. After thorough review, consideration, and analysis, the Director similarly concluded that the Petitioner did not establish that, on balance, waiving the job offer requirement would benefit the United States.[3]

On appeal, the Petitioner claims that the Director did not "give due regard" to the evidence in the record or apply the appropriate preponderance of the evidence standard. The Petitioner asserts that the Director too narrowly focused on the Petitioner's endeavor of operating a business and should have considered "the broader implications of her work" and "the ripple effect of her contributions and the positive changes she brings to the beauty industry as a whole." Specifically, the Petitioner reiterates her claim that she has had a positive impact as an instructor and teacher, and that her "track record and endorsements from respected individuals in the industry" should be sufficient to establish the national importance of the endeavor. The Petitioner also repeats on appeal the claims related to the potential

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as having a degree of expertise significantly above that ordinarily encountered in the field. USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

[2] 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (BIA 1971).

[3] The Director did not make a finding as to the second prong of the *Dhanasar* framework, whether the Petitioner is well-positioned to advance the proposed endeavor. Because we agree with the Director's conclusions as to the national importance element of the first *Dhanasar* prong, and because, as we discuss below, this is dispositive of the Petitioner's appeal, we need not further summarize the Director's decision as to the exceptional ability determination or the third *Dhanasar* prong here.

economic impact of the proposed endeavor and the importance of entrepreneurship and the positive impact of immigrants on economic growth.

We adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's proposed endeavor. *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 Director's decision thoroughly reviewed, discussed, and analyzed the Petitioner's documentation consistent with our precedent decision in *Matter of Dhanasar*. On appeal, rather than specifically identifying any errors in law or fact related to the national importance analysis, the Petitioner broadly asserts that she has established eligibility and that the Director did not properly analyze the evidence. However, the Petitioner does not address or overcome the Director's specific findings. For example, the Petitioner repeats on appeal the claim that her project to provide free services to cancer patients helps establish the national importance of the endeavor, but she does not address the Director's finding that this project represents a materially changed aspect to the endeavor. Additionally, the Petitioner again emphasizes on appeal that her previous experience in the industry establishes the national importance of the endeavor, without addressing the Director's finding that this claim primarily relates to the second *Dhanasar* prong and does not help explain the specific endeavor nor demonstrate its national importance. Finally, although the Petitioner repeats the claims related to the importance of entrepreneurship and the positive impact of immigrants on the U.S. economy, she does not address the Director's finding that these general claims to do not sufficiently relate to the proposed endeavor or establish its national importance. On appeal, the Petitioner primarily repeats claims previously made, such as broadly asserting that her work will have "broad implications" based upon its "ripple effects," but does not overcome the basis for the denial nor establish the endeavor's national importance.

Because the Petitioner has not established the national importance of her proposed endeavor, as required by the first prong of the *Dhanasar* framework, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the Petitioner is an individual of exceptional ability and whether the record satisfies the second or third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant is otherwise ineligible).

ORDER: The appeal is dismissed.