U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29337599

Date: FEB. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dual language educator, seeks employment-based second preference (EB-2) 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 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 the record did not establish that waiving the job offer requirement would be 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.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business.[1] Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is then required to establish that the petitioner merits 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

[1] The record establishes that the Petitioner qualifies as an EB-2 advanced degree professional because she is a member of the professions holding a U.S. advanced degree in her field. 8 C.F.R. § 204.5(k)(2), (3)(i); section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32) (defining a "profession" as, among other occupations, teachers in elementary or secondary schools).

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.

II. ANALYSIS

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. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. For example, an endeavor may qualify if it has national implications within a particular field, such as certain improved manufacturing processes or medical advances, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.*

The Director concluded that while the Petitioner's endeavor as a dual-language educator has substantial merit, the record did not establish that the endeavor's impact would rise to the level of national importance. On appeal, the Petitioner asserts that the Director did not fully consider the provided evidence. Upon review, the Petitioner has not established what prospective impact her endeavor will have that will rise to the level of national importance.

On appeal, as in her underlying petition, the Petitioner relies on the importance of the field of bilingual education to establish the importance of her endeavor, providing extensive documentation of the field's benefits and prominence in U.S. education policy. However, when determining whether a proposed endeavor would have national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but what specific impact will be attributable to that proposed endeavor. *Id.*; *see generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

In *Dhanasar*, the noncitizen's teaching activities in science, technology, engineering, and math (STEM) disciplines were found to have substantial merit, but did not qualify him under the first prong because the evidence did not show how that work would impact the field of STEM education more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Similarly, the record here does not contain sufficient information to establish what impact the Petitioner's work will have beyond her immediate professional circle.

The Petitioner is currently employed in the United States as a dual language Spanish educator while working on her doctoral dissertation in the field of education. According to her strategic professional plan, she will be "offering customized consulting, coaching, and performance monitoring services across the United States," "working as a formal doctor in education [by] producing and conducting

[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).

original research," performing "in-person visits, virtual tours, speaking engagements, webinars, professional learning, and workshops with schools and organizations," and "developing educational content on websites, social media, podcasts, infographics, videos, books, guides, and blogs" to promote and improve bilingual education in the United States.

The professional plan and the remainder of the evidence do not specify how the Petitioner will divide her time between their various listed occupations, such as consulting, researching, and teaching. The only evidence provided regarding the Petitioner's potential employment consists of various job and interview offers for positions as a bilingual grade school teacher. It is therefore not apparent from the evidence provided in what capacity she would conduct scholarly research, act as a consultant, or perform the other activities described in the professional plan.

Furthermore, the record does not quantify or specify any particular impact the described activities would have. For example, while the Petitioner states that she "will engage in training dual-language and English teachers across the U.S. to effectively meet the needs of culturally diverse students," she does not document where and how she will do so, such as how many teachers she will instruct, or what specifically she will train these teachers in.

We acknowledge the many provided recommendation letters from the Petitioner's coworkers and experts in the field which state that the Petitioner's professional plan establishes the impact her endeavor will have. However, while we may, in our discretion, use expert opinion letters submitted by the Petitioner as advisory opinions, we are ultimately responsible for determining eligibility for the benefit sought. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 792 (Comm'r 1988). Where an opinion letter is not in accord with other information in the record or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.*

In this case, the letters state the theoretical merits of the activities described in the professional plan, but provide no specific information about how or where the Petitioner's work will impact her field or what that impact would be. For example, the letter from Professor C-F-F- states that the endeavor will be "addressing the shortage of qualified teachers," without quantifying how many more teachers will be qualified as a result of the Petitioner's work or when or where this will occur. When assessing national importance, we look for an endeavor's broader implications. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. Without specific information about that endeavor's nature, we cannot find it will have the kinds of expansive effects contemplated by *Dhanasar*. *Id.* Because the provided opinion letters do not provide relevant information regarding the Petitioner's proposed activities, we will grant those letters limited evidentiary weight in these proceedings. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 791.

On appeal, the Petitioner contends that "the tasks outlined in the Strategic Professional Plan were not thoroughly reviewed," but provides no example of a fact that was overlooked or any specific impact of her endeavor which the Director failed to acknowledge. Instead, she states that her plan has "significant implications for the field of dual language education on a large scale and [is] not specific to any particular site, center, client, individual, entity, or school." However, this lack of specificity does not support the Petitioner's case. While a petition for a national interest waiver does not require a job offer, it is the Petitioner's burden to provide relevant, probative, and credible evidence demonstrating that her endeavor has significant potential to broadly enhance societal welfare or

cultural or artistic enrichment, contribute to the advancement of a valuable technology or field of study, or otherwise rise to the level of national importance. *Matter of Chawathe*, 25 I&N Dec. at 375-76 (describing the preponderance of the evidence standard used in these proceedings); *see generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(1). Here, the Petitioner has not detailed, quantified, or documented where, when or how she will perform the many activities named in her professional plan, and has provided no information about what effects will be attributable to those activities beyond a general contribution to a meritorious area of endeavor. She has not met her burden of proof by providing documentation of how her endeavor's effects will extend beyond her classroom and immediate professional circle to rise to the level of national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. As such, she has not met the first prong of the *Dhanasar* test.

III. CONCLUSION

Because the Petitioner has not established her eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the other two prongs and hereby reserve those issues. *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 an applicant did not otherwise meet their burden of proof).

ORDER: The appeal is dismissed.