U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34579058

Date: NOV. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification, as an individual of exceptional ability, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, 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.[1]

I. LAW

To qualify for a national interest waiver, a petitioner must first show eligibility 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. Section 203(b)(2)(B)(i) 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."

[1] We note that the Petitioner's signature on her national interest waiver does not match her signature on the instant appeal, or the signature on her passport, submitted with her national interest waiver, and other USCIS filings. The regulation at 8 C.F.R. § 103.2(a)(2) and the national interest waiver instructions make clear that the application must be properly signed by the Petitioner. USCIS denies a benefit request accepted for adjudication if there is a deficient signature. See generally 1 USCIS Policy Manual B.2(A), https://www.uscis.gov/policy-manual (providing, as guidance, "[i]f USCIS accepts a request for adjudication and later determines that it has a deficient signature, USCIS denies the request.") In order to maintain the integrity of the immigration benefit system and validate the identity of benefit requestors, USCIS requires a valid signature on applications, petitions, requests, and certain other documents filed with USCIS. Id. The Director did not raise this ground as a basis for the denial. However, should the Petitioner submit future filings regarding this national interest waiver, she will need to demonstrate she was the individual who signed the underlying benefit request.

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,[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.

Id.

II. ANALYSIS

The Director determined the Petitioner demonstrated her eligibility for the underlying EB-2 visa classification as an individual of exceptional ability in the sciences, arts, or business. The Director also determined that the Petitioner established the substantial merit of her proposed endeavor under *Dhanasar's* first prong and that she was well-positioned to advance her proposed endeavor under *Dhanasar's* second prong. However, the Director found the Petitioner had not established the national importance of her proposed endeavor under *Dhanasar's* first prong or that on balance, waiving the job offer requirement would benefit the United States under *Dhanasar's* third prong.

Dhanasar's first prong relates to substantial merit and national importance of the specific proposed endeavor. Id. at 889. The Petitioner is a workplace safety technician and entrepreneur who intends to direct the operations of a Florida based company to provide training programs in subjects related to occupational safety and health, environmental management, and environmental and social governance to U.S. businesses, organizations, and associations. The Petitioner intends to create gamified training content, which may be delivered in person or through an online platform, with the goal of improving employee safety, reducing workplace accidents, increasing productivity, and protecting the environment.

As noted, the Director determined the Petitioner had established the substantial merit of her proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. In Dhanasar, we noted that, in assessing national importance, "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id at 890. We also stated that "[a]n 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.

On appeal, the Petitioner provides previously submitted data on work-related accidents and the related costs of workplace fatalities, injuries, and illnesses and asserts this data illustrates in a numeric and concrete way the impact of her proposed endeavor, claiming this information was overlooked by the Director. However, the record does not support the Petitioner's assertions. The Director found that

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

the Petitioner's data regarding work related injuries, fatalities and disease and associated costs described the scale of the industry the Petitioner will work in and did not demonstrate the prospective impact of her proposed endeavor.[3] We also conclude the Petitioner's data does not support the national importance of her proposed endeavor. For example, the Petitioner asserts that nationally prevented lost-time injury or illness saves $37,000 and each avoided occupational fatality saves U.S. employers $1,390,000.[4] She then infers that her proposed endeavor will have broader economic implications because it will reduce the costs involved in occupational safety. However, she does not explain how, for example, her proposed endeavor would reduce these costs such that it would result in national or global implications for the field or provide substantial economic benefits regionally or at a level of national importance. We acknowledge the Petitioner's hiring plan projections, which she summarizes on appeal. The Petitioner describes how her company will expand to a workforce of 23 employees by year five, with payroll expenses projected to increase to 1.4 million in year five. However, the Petitioner did not present supporting evidence corroborating these assertions and projected figures in the record below or on appeal. Moreover, the Petitioner did not demonstrate how her company's claimed revenue and employment projections, even if supported, would provide substantial economic benefits to the Florida region or the U.S. economy at a level commensurate with national importance. On appeal, the Petitioner adds that she will engage independent contractors for roles within the company which will allow for operational flexibility and stimulate the economy. She also adds that her endeavor will benefit underserved segments of the workforce, such as temporary or part-time workers. However, here again, the Petitioner does not explain how engaging contractors or part-time workers would provide substantial economic benefits to the Florida region or the U.S. economy at a level commensurate with national importance.

The Petitioner also asserts that we overlooked the inherent challenges of forecasting concrete outcomes for endeavors not yet implemented. However, providing relevant growth metrics is just one way of evidencing national importance. See generally 6 USCIS Policy Manual F.5(D)(4), https://www.uscis.gov/policymanual (providing, as guidance, examples of how an entrepreneur may establish the national importance of their proposed endeavor, including evidence demonstrating a future intent to invest in the entity by an outside investor; funding from federal, state, or local government entities with expertise in economic development, research and development, or job creation; awards or grants by policy or research institutes). Further, we note that on appeal the Petitioner includes three letters from different entities stating they plan on engaging the services of the company the Petitioner will be directing. However, the Petitioner does not reference or explain the letters in her appeal brief and the letters do not provide details on, for example, the entities themselves, their sizes and locations, to demonstrate acquiring them as clients would have national or global impact in the field or economic benefits to the Florida region or the U.S. economy at a level commensurate with national importance.

The Petitioner further asserts that we did not follow *Dhanasar's* analytical framework because we also did not consider the broader social effects of her proposed endeavor's training programs. According to the Petitioner, her evidence demonstrates that her proposed endeavor would lead to significant

[3] The Director also considered the Petitioner's information regarding work related safety and the goals of her specific proposed endeavor in determining the Petitioner had demonstrated the substantial merit of her endeavor. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policymanual (explaining, as guidance, that "merit may be established without immediate or quantifiable economic impact").

[4] The record below cites to the Occupational Safety and Health Administration's website as the source of this data.

improvements in workplace safety in several industries, by, for example, reducing accidents, enhancing productivity and economic growth, raising industry standards, fostering societal and environmental benefits, equipping employees with essential knowledge about safety and health, environmental management, and governance. However, the Director determined that the Petitioner did not establish that her proposed endeavor would offer benefits that extend beyond her trainees to impact the field of workplace safety more broadly, nor did she establish that her proposed endeavor's plans would disseminate her training methods or course materials to influence the broader sector of the industry. Furthermore, we add that the Dhanasar decision contemplates that "[a]n 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." Matter of Dhanasar, 26 I&N Dec. at 893. However, here, the Petitioner has not established the extent to which her proposed endeavor's methods and teachings, which she asserts, for example, involves an integrated approach to occupational safety, environmental management, and mental health, and ensures companies comply with regulatory requirements, differ from or improves upon those already available and in use in the United States such that her proposed endeavor would have national or global implications within her field or for the United States.

Further, the Petitioner asserts that her proposed endeavor is in an area that the U.S. government holds as nationally important. However, as the Director explained, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889.

For these reasons, the Petitioner has not demonstrated that, beyond the limited benefits provided to her prospective clients, the Petitioner's proposed endeavor has broader implications in the field of workplace safety or that it has the significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area for instance, rising to the level of national importance.

Accordingly, the Petitioner has not demonstrated the national importance of the proposed endeavor under the first Dhanasar prong, and therefore eligibility for a national interest waiver. As our finding is dispositive of this appeal, we reserve the Petitioner's arguments regarding whether she has demonstrated the second and 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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the Dhanasar analytical framework and therefore has not established that she merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

ORDER: The appeal is dismissed.