U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23121496

Date: DEC. 29, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an IT project manager, seeks employment-based second preference (EB-2) immigrant 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. *See* 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 although the Petitioner established her eligibility as a member of the professions holding an advanced degree, the record did not establish that a waiver of 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. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit 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

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.

II. ANALYSIS

The Petitioner is an IT project manager who proposes to work in this occupation for a company in the United States. She earned the U.S. equivalent of a master's degree in management of knowledge and information technology in 2002 from C-U-B- in Brazil, and has been working in her field since. As she has established her eligibility for the EB-2 classification as a member of the professions holding an advanced degree, the sole issue on appeal is whether a waiver of the job offer requirement would be in the national interest. We conclude that she does not merit a waiver.

A. Substantial Merit and National Importance

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. *Dhanasar*, 26 I&N Dec. at 889.

The Director concluded that the Petitioner's proposed endeavor, working with a U.S. company as an IT project manager, was of substantial merit but not of national importance. He stated that the record did not show that the impact of her work would extend beyond that of her employer and its clients to affect the IT field more broadly. The Director further stated that while the Petitioner submitted evidence of a growing demand for IT workers in the U.S., any shortage of workers in an occupation and location is addressed by the U.S. Department of Labor through the labor certification process.

On appeal, the Petitioner the Petitioner first refers to the interest of the U.S. government in STEM workforce development, including the unique considerations for those with STEM degrees and proposing to work in their fields when adjudicating requests for national interest waivers. *See* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual. While we acknowledge that the Petitioner's proposed endeavor is in a STEM field, this section of the USCIS Policy Manual emphasizes those endeavors that aim to advance STEM technologies and research, as these may have sufficiently broad potential implications. Here, the Petitioner proposes to serve as an IT project manager, in which she would work as a subcontractor and manage IT projects for client businesses. She states that this would also include training other IT workers and project managers. In addition, she asserts that she has developed an innovation through her master's thesis, "Process mapping methodology for systems integration." However, much like the petitioner's proposed STEM teaching activities involved in *Dhansar*, here the Petitioner has not shown that her work as a project manager

[1] *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).

in a STEM field would affect the field of IT project management more broadly. Further, while she has presented reference letters which indicate that she has successfully used process mapping in her previous IT projects, these do not demonstrate that this is her innovation or that the broader field would benefit through her use of this methodology.

The Petitioner also asserts on appeal that this evidence of her previous completion of IT projects in the health care, banking, and legal industries shows the regional and national impact of her proposed endeavor. But the first prong of the *Dhanasar* analytical framework focuses on the potential prospective impact of the endeavor, whereas her previous work experience is relevant when considering whether she is well positioned to advance her endeavor under the second prong. The fact that she has managed successful IT projects that involved national or regional systems in the past does not show that her proposed endeavor in the United States would be of national importance.

Finally, the Petitioner provides information about the U.S. job market for IT professionals and states that this shows she is entering the market "at a time when the American market needs experienced professionals." However, the Petitioner has not shown that the state of the U.S. job market for her occupation has bearing on whether her proposed endeavor in that occupation is of national importance. As noted by the Director in his decision, the U.S. Department of Labor's labor certification and Schedule A processes exist for the hiring of noncitizens in occupations (and locations) where it has determined that there are not sufficient qualified and available U.S. workers.

We agree that the Petitioner has shown that her proposed endeavor is of substantial merit, but per the above she has not demonstrated its national importance. She has not therefore established that she meets the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor, and Whether on Balance a Waiver Would be Beneficial

Having concluded that the Petitioner did not meet the first prong of the *Dhanasar* analysis, the Director declined to reach the second and third prongs. As the Petitioner is not eligible for a national interest waiver, we agree with this approach and will reserve these issues.[2]

III. CONCLUSION

The Petitioner has established her eligibility for the EB-2 immigrant visa classification as a member of the professions holding an advanced degree. She has not demonstrated that her proposed endeavor is of national importance, and is therefore not eligible for a national interest waiver. Her petition will remain denied.

ORDER: The appeal is dismissed.

[2] *See INS v. Bagamasbad,* 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).