U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29022273

Date: DEC. 19, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an early-childhood educator, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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. *See 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).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish 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.

I. LAW

To establish eligibility for a national interest waiver, a petition must first demonstrate qualification for the underlying EB-2 immigrant 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement would be in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

A. Categorical Ineligibility for EB-2 Classification

In the first instance, we conclude that the Petitioner has not provided relevant, material, or probative evidence to demonstrate their categorical eligibility for classification as an EB-2 immigrant. So we withdraw the Director's conclusion that the Petitioner is an advanced degree professional classifiable as an EB-2 permanent immigrant.

The Petitioner submitted a copy of a bachelor's degree certificate in technology of textile and light production issued by the [redacted] Uzbekistan. But the record also contains a credential evaluation equating a combination of the Petitioner's foreign bachelor's level education and a certificate issued by the [redacted] to a U.S. master's degree in textile technology. To be eligible under section 203(b)(2), 8 U.S.C. § 1153(b)(2)(A), the Petitioner must have a single degree that is the "foreign equivalent degree" to a United States master's degree or a single degree that is the "foreign equivalent degree: to a United States baccalaureate degree plus five years of progressively responsible work experience. So the credential evaluation, which

evaluates the Petitioner's equivalency to a U.S. degree via a combination of educational credentials, is not probative to establish the Petitioner's categorical eligibility for classification as an employment based second preference immigrant.

As stated earlier, the record contains the Petitioner's bachelor's degree certificate in technology of textile and light production issued by the [redacted], Uzbekistan, issued on June 29, 1999. The Educational Database for Global Education (EDGE), maintained by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects the first bachelor's degrees in Uzbekistan were awarded in 2000. Moreover, the information in the AACRAO EDGE database further reveals that only baccalaureate degrees earned after a four-year course of study in Uzbekistan are the single source equivalent to a United States bachelor's degree. The Petitioner did not submit an official academic record showing that they had earned a foreign bachelor's degree and the duration of time required to earn that degree. So, the Director requested the official academic record supporting the Petitioner's bachelor's degree certificate in technology of textile and light production. The Petitioner did not submit an official academic record as requested. So, for these reasons, we are unable to determine if the Petitioner's Uzbeki bachelor's degree certificate is the single source equivalent of a U.S. bachelor's degree such that they could demonstrate eligibility for classification in the employment based second preference permanent immigrant as an advanced degree professional.

And the record contained insufficient evidence to evaluate the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability. The Petitioner should be prepared to address their categorical eligibility for EB-2 classification in any future proceedings requiring a petitioner to demonstrate eligibility as an advanced degree professional or individual of exceptional ability.[1]

B. Substantial Merit and National Importance

The Petitioner initially proposed to endeavor to "seek employment as [an] independent consultant in the field of educational system related to workshop training" in the United States. Specifically, the Petitioner intended to consult on the use of their "methodology" for the "development of hand motor skill in primary schools" utilizing "finger games." The record initially contained the Petitioner's "affidavit…in support of permanent residency petition," educational credentials evaluation with certificates, curriculum vitae, and awards.[2] The record developed initially at the time of filing demonstrated that the Petitioner's proposed endeavor was essentially a job search. And the purpose of a national interest waiver is not to facilitate a petitioner's U.S. job search.

The Director issued a request for evidence (RFE) for additional evidence and clarification of the Petitioner's proposed endeavor to determine its substantial merit and national importance. In response to the RFE, and perhaps having conceded that their initial endeavor could not support a national interest waiver under the *Dhanasar* framework, the Petitioner submitted two recommendation letters,

[1] As the resolution of the issues pertaining to the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework are dispositive of this appeal, further investigation and analysis of the Petitioner's categorical eligibility for EB-2 classification by issuing a request for evidence would serve no legal purpose.

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

a "personal plan," an expert opinion letter, and a certificate of membership in a childcare association. The Petitioner asserted in response to the RFE and at appeal that they would work as an entrepreneurial preschool teacher intending to open their own preschool facility with an aim to impact early childhood education, address education disparities, promote health and well-being, and contribute to the economy by "teach[ing] young children language, motor, and social skills." Citing their years of experience as a purported education administrator, the Petitioner intended to "manage [a] daycare facility" and employ "several workers to provide early education services to children."

The Petitioner's response significantly departed from the proposed endeavor they indicated in their initial filing. The proposed endeavor morphed into the Petitioner effectively serving as the sole proprietor of their own entrepreneurial business. In the RFE response, the Petitioner transformed their proposed endeavor from an independent consultant seeking to offer their services in the U.S. education system to owner/operator of their own daycare or preschool facility. The addition of the Petitioner's entrepreneurial business did not enhance or clarify the Petitioner's proposed endeavor as initially identified in their petition. To the contrary, it transformed the proposed endeavor into a wholly different one.

A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition, such as converting a plan to be an independent education industry consultant into operating a daycare, to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc Comm'r 1998). The Petitioner's transfiguration of their proposed endeavor from the initial petition to the response to the RFE introduced significant ambiguity into their proposed endeavor which prevented analysis into its substantial merit or national importance.

The *Dhanasar* framework cannot be applied to two dueling proposed endeavors. A petitioner must identify the specific endeavor they propose to undertake. *See Matter of Dhanasar*, 26 I&N Dec. at 889. It is not possible to determine the substantial merit and national importance of an endeavor when a Petitioner cannot consistently articulate the nature of the endeavor. So we conclude that the Petitioner has not established that their proposed endeavor is of substantial merit and national importance.

III. CONCLUSION

Because the identified reasons are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible).

The Petitioner is not eligible for EB-2 classification. And they have not met the requisite first prong of the *Dhanasar* analytical framework. So we conclude that they have not established that they are eligible for or otherwise merit a national interest waiver of the job offer requirement, and thus of a labor certification. Accordingly the appeal will be dismissed.

ORDER: The appeal is dismissed.