U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29381144

Date: DEC. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an educational teacher and entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 Petitioner established she was an advanced degree professional, but had not demonstrated 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.

The Petitioner intends to open an education center to assist children between the ages of 0 and 5 with special needs, and to provide after school courses for children between the ages of 4 and 11 to assist with "educational and training requirements." The Director summarized the evidence and analyzed why it did not establish the Petitioner's eligibility for a national interest waiver. On appeal, the Petitioner submits a brief which generally reiterates the benefits of her profession, her qualifications, and the claimed economic impacts of her proposed education center and contends that she has established the national importance of her proposed endeavor but does not provide any new evidence or arguments which overcome the Director's determination. The Petitioner's brief on appeal reads quite similarly to the letter she submitted with her response to the Director's notice of intent to deny.

We adopt and affirm the Director's decision. *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 this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they

give "individualized consideration" to the case). The Director thoroughly reviewed, discussed, and analyzed the Petitioner's national importance claims under the first prong of *Dhanasar*, including her submission of industry reports and articles relating to the shortage of teachers and the importance of education in the United States, her job experience and skills, and the economic impact of her ownership of a company located in Massachusetts.

As it relates to the Petitioner's experience and ability claims, those relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id*. at 890. Moreover, the Petitioner must establish the national importance of her business rather than the importance of education, small businesses, entrepreneurism, and immigration.[1] 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." *Id.* at 889. Further, "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*. Also, "[a]n endeavor that has particularly 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*. at 890.

On appeal, the Petitioner states the Director applied a stricter standard of proof and did not sufficiently review all evidence. Specifically, she asserts the Director did not sufficiently consider her business plan, recommendation letters, industry reports and articles, and résumé. However, in the decision, the Director discussed the Petitioner's qualifications and experience, as well as specifically referenced and analyzed the business plan, the recommendation letter, and industry reports and articles. Although the Petitioner states the Director did not consider the Petitioner's vast contributions in the field, she does not identify what these contributions are or how they affected the field. The record does not contain evidence suggesting the Petitioner's services are better, different, or cost less than those already available in the United States. The Petitioner does not explain what specific content the Director failed to consider or how the record contains evidence that overcomes the Director's analysis and findings. Therefore, we do not find support for the Petitioner's assertion that the Director applied a stricter standard of proof and did not properly review all evidence.

Upon review of the record, we agree with the Director that the Petitioner has not established that her proposed endeavor, including operating her own business, sufficiently extends beyond her company and its clientele to impact the industry or the field more broadly, at a level commensurate with national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Here, the record does not show through supporting documentation how her specific education center stands to sufficiently extend beyond her prospective students to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. *Id*. at 890. The petition will remain denied.

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[1] The Petitioner's contentions and submissions of industry articles and reports relates to the substantial merit of the proposed endeavor rather than the national importance.

Because the Petitioner did not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver, as a matter of discretion.[2] Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[3]

ORDER: The appeal is dismissed.

[2] *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).
[3] *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 alternate issues on appeal where an applicant is otherwise ineligible).