U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25690617

Date: FEB. 23, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree. 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.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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. 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 is in the national interest.

While 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*

[1] In the decision, the Director indicated that the Petitioner seeks classification as an individual of exceptional ability; however, in an earlier request for evidence (RFE), the Director found that the Petitioner "qualifies for the E21 classification with an advance degree [sic] . . . therefore, there is no need to also establish she is also [sic] an individual of exceptional ability."

Dhanasar, 26 I&N Dec. 884 (AAO 2016).[2] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that 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 he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the noncitizen's qualifications 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. In each case, the factor(s) 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.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. Specifically, the Director found that the Petitioner "has not established that the proposed endeavor is of national importance," as required by the first *Dhanasar* prong, and the Director further found that the record does not satisfy the second or third *Dhanasar* prongs. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a project for participants to "develop culturally through a selection of educational courses, films, concerts, exhibitions, etc." The Petitioner asserted

[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

that, through the proposed endeavor, she "will be able to develop efficient approaches to design, planning, organization, and control which will allow me to solve the national social problems regarding body-positive social movement via optimization of the processes of unification and cohesion of society." Specifically, the Petitioner asserted that her plan for the proposed endeavor would entail the following:

- Building a community on Instagram;
- Building a Twitter community;
- Building a Facebook community;
- YouTube channel creation;
- Creating a checklist;
- Creating a list of daily rituals;
- Create an inspirational collection of quotes for every day;
- Creating a music playlists [sic] on Sound Cloud, Spotify to start the day and end the day;
- Creating a selection of films, in particular – documentaries;
- Creating routes for walks and meetings;
- Development of an action plan (book club, sports, dancing); and
- Zoom conferences with the Body Positive Social Movement representatives and many more.

In a request for evidence (RFE), the Director informed the Petitioner that her prospective work "is not well-defined," the record does not establish the location where she would be pursuing the proposed endeavor, and she "provided no documentation to demonstrate job creation in the U.S." The Director further informed the Petitioner that "it appears [her] proposed endeavor does not stand to sufficiently extend beyond her own business to impact [s]ocial and [c]ultural [m]anagement more broadly at a level commensurate with national importance."

In response to the Director's RFE, the Petitioner submitted an undated business plan for [redacted], which, in relevant part, indicates that the business "will be located in [redacted] New York," and that she intends to employ 18 workers by the fifth year, including herself as the chief executive officer, seven "social media managers," five "project curators," and five "project managers." The Petitioner also submitted a copy of a filing receipt for the certificate of incorporation for [redacted], which the Petitioner filed with the New York State Department of State, Division of Corporations, indicating that she founded the company in [redacted] 2022, after the 2021 petition filing date.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *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 in an effort 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 initial description of the proposed endeavor, with the list of tasks quoted in full above, omits reference to founding a business and hiring employees. The location of the proposed endeavor's

operations and whether the proposed endeavor would employ U.S. workers are material to whether the proposed endeavor may have national importance. Because the Petitioner asserted for the first time in response to the Director's RFE that she would found a new company and hire employees, and because the certificate of incorporation is dated after the petition filing date, the Petitioner's [redacted], its business plan, and any other information relating to it in the record—such as a letter from a professor of psychology at [redacted] University regarding the Petitioner's company also submitted in response to the RFE—present a new set of facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Because the Petitioner's [redacted] cannot establish eligibility, we need not address it further.

In the decision, the Director noted that the record does not establish how the proposed endeavor "would be financially supported or how [the Petitioner] would be able to hire and pay the 18 employees [referenced in the business plan submitted in response to the RFE]." The Director also noted that the record does not contain "supporting substantive evidence to support [the Petitioner's] assertions" regarding her proposed endeavor. The Director then concluded that the record does not establish that the proposed endeavor will have the type of broader implications, such as substantial positive economic effects, contemplated by the first *Dhanasar* prong.

On appeal, the Petitioner reasserts that her proposed endeavor will entail the list of tasks quoted in full above. The Petitioner also reasserts information in the business plan for her company submitted in response to the Director's RFE, which cannot establish eligibility for the reasons discussed above. The Petitioner also submits on appeal general information about mental health that she attributes to IBISWorld, Centers for Disease Control (CDC), the National Institute for Mental Health (NIMH), and the National Alliance on Mental Illness (NAMI); however, the Petitioner does not include a copy of the referenced reports or publications, titles of the reports or publications or dates of publication, or other information about the reports or publications that may assist in corroborating the Petitioner's assertions.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

As discussed above, information relating to the business the Petitioner founded after the petition filing date may not establish eligibility because it presents a new set of facts material to eligibility for the requested benefit that the Petitioner did not present at the time of filing. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. In turn, the information the Petitioner attributes on appeal to IBISWorld, the CDC, NIMH, and NAMI is not supported by documentary evidence or a means of corroborating the Petitioner's assertions. Even to the extent that the unidentified reports or publications from IBISWorld, the CDC, NIMH, and NAMI could establish eligibility, the Petitioner's own summations of the reports or publications do not

indicate that they specifically identify her or the proposed endeavor, nor do they appear to discuss how the specific proposed endeavor may have national importance. As noted above, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Finally, as the Director explained in both the RFE and the decision, the information in the record—that may establish eligibility—is not well defined, it does not establish the location where the proposed endeavor will operate and how it will generate income, and it does not indicate that the proposed endeavor will have national or global implications within a particular field or otherwise have broader implications, such as significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area, as contemplated by the first *Dhanasar* prong. *See id.* at 889-90.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.