U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26662852

Date: JUL. 31, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an industrial engineering expert, seeks second preference 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 EB-2 immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center revoked the previously approved petition,[1] concluding that the Petitioner did not qualify for the EB-2 classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The Director also concluded that 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.

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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is

[1] The Director determined that the instant visa petition was initially approved in error and issued a notice of intent to revoke prior to revocation.

customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In order to qualify as an individual of exceptional ability in the sciences, the arts, or business, a petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If 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 (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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

II. ANALYSIS

A. Qualification for EB-2 Classification

The Director determined that the record did not establish the Petitioner qualifies for the underlying EB-2 classification as either a member of the professions holding an advanced degree, or as an individual of exceptional ability in the sciences, arts, or business. For reasons discussed below, we withdraw the Director's conclusion regarding the Petitioner's qualification for EB-2 classification.

The Director concluded that the Petitioner does not qualify as an advanced degree professional because: first, her master's degree in higher education is not related to the field of her proposed endeavor, or industrial engineering; and second, the employment letters demonstrated that her five years of post-baccalaureate experience was not in the specialty or in the field of industrial engineering. On appeal, the Petitioner claims that her master's degree in higher education is related to the industrial engineering.

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The record shows that the Petitioner earned a bachelor's degree in business industrial engineering in April 2017 from [redacted] and a professional master's degree in higher education in April 2019 from the same [redacted]. The Petitioner included official academic transcripts for both degrees and an academic evaluation demonstrating that her bachelor's degree is equivalent of a U.S. bachelor of science in industrial engineering and management and her professional master's degree is equivalent of a U.S. master of science in education with a focus on higher education.

The Petitioner's master's degree in higher education meets the definition of "advanced degree" as it is "any" foreign equivalent degree above that of baccalaureate pursuant to 8 C.F.R. § 204.5(k)(2). Therefore, we withdraw the Director's decision in this matter and conclude that the Petitioner has established her eligibility as a member of the professions holding an advanced degree based on the evidence that she holds the equivalent of a United States baccalaureate degree plus a master's degree.[3]

As the Petitioner has established eligibility for the underlying EB-2 classification as an advanced degree professional, we need not address her claims of exceptional ability.

B. National Interest Waiver

We now turn to the Petitioner's eligibility for the national interest waiver under *Dhanasar*. After reviewing the record, we agree with the Director's conclusion that the Petitioner's endeavor does not meet the first prong of the *Dhanasar* framework.[4]

1. Proposed Endeavor

The Petitioner initially stated that her occupation is an au pair and did not provide the job title of her proposed employment on Form I-140, Immigrant Petition for Alien Workers. Instead, the Petitioner submitted a statement describing her proposed employment as follows:

> My goal is work as an industrial engineering expert, my purpose is to lead different areas of industrial processes, apply my experience as a jury and an exponent in quality control, implementing new technologies and information systems, merging modern business management tools. Develop research to improve production processes and thus propose solutions to events within the organization and business.

The Petitioner's initial description of the proposed endeavor does not provide any other details beyond her intention to work as an industrial engineering expert with or for unidentified organizations and businesses, managing different aspects of industrial processes. The Petitioner also did not submit any evidentiary document to support how her proposed endeavor meets the three prongs of *Dhanasar*.

In response to the Director's request for evidence (RFE), the Petitioner stated that she would provide business industrial engineering services through her company, [redacted] and submitted her "business plan resume." This business plan states that the Petitioner's company is "the first company

[3] As the Petitioner has qualified for the second preference immigrant classification based on her degrees, we need not determine whether her five years of post-baccalaureate experience was in the specialty.
[4] The Director also found that the Petitioner did not meet the second or third prongs of the *Dhanasar* analytical framework.

in Latin America that has unite[d] the services of industrial engineering and architecture as a single whole," thus expanding the proposed endeavor to providing both industrial engineering consultation and architecture services "at a global level."

In response to the Director's notice of intent to revoke (NOIR), the Petitioner submitted another revised statement that further expands the scope of her proposed endeavor and changes the focus of her company's services as follows:

> I intend to work in different fields of industrial engineering; engineering is multidisciplinary and specializes in knowledge of functions that are important for the growth of a company, such as production, administration, finance, and economics. My focus is productivity. The industrial engineer is analyzing how to reduce time, costs, materials and simplify the assembly of a part, among other things. For me, it is a pleasure and honor to be able to contribute my knowledge to this nation; to be able to bring my company from Panama to the United States, and at the same time help other companies to grow and contribute to the economy of the United States.

The Petitioner included a brochure that explains the company's mission to "improve productivity and quality of business" by "documenting the processes of the companies and that they can have in their hands a manual, guide, magazine or recipe, with the highest standards and quality in the current market." As samples of her projects, the Petitioner submitted a recipe booklet with colorful illustrations in Spanish and another booklet detailing the entire process of making flour tortillas.

On appeal, the Petitioner once again changes her proposed endeavor to the following description: "[m]y proposed general effort in the United States is to work in Industrial and Commercial Negotiations at a national level, as well as to contribute to improve the productivity of those companies that are economically depressed; through my experience as a consultant and governmental contacts such as the Chamber of Commerce of Panama." The Petitioner had not discussed working in commercial negotiations or working with companies that are economically depressed prior to the appeal.

Based upon the evidence in the record, the Petitioner has not identified a specific or consistent proposed endeavor. As described in her initial filing, her proposed endeavor involved working with unidentified companies or businesses as an industrial engineering expert. By contrast, her RFE and NOIR responses indicated a shift in focus to business ownership. Furthermore, while the RFE response stated that her company will provide a combination of industrial engineering and architecture services, the NOIR response changed the focus of her company to creating standardized business manuals to improve productivity.

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). If significant changes are made to the initial request for approval, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Here, when the Director asked the Petitioner for more details about her proposed endeavor in the RFE or NOIR, the Petitioner responded by significantly changing the endeavor. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the

petition is filed. 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 Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). We will therefore not consider the changes made to the Petitioner's proposed endeavor in reply to the Director's RFE and NOIR, or the new evidence submitted on appeal.

2. Substantial Merit and National Importance

The first prong of the *Dhanasar*'s analytical framework relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. As discussed above, the Petitioner's statements on record do not offer a consistent, specific proposed endeavor and contain material changes. Therefore, we are unable to properly evaluate her endeavor under the first prong and conclude that the Petitioner did not demonstrate the endeavor's substantial merit and national importance.

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 "the specific endeavor that the foreign national proposes to undertake." *Id.* We also look to evidence documenting the "potential prospective impact" of the proposed endeavor. The Petitioner claimed that her endeavor as a business industrial engineer expert and consultant encompasses various disciplines in the fields of business, engineering, finances, technology and even architecture, and will provide significant economic contribution to the United States. But the record does not offer any sufficient, specific information and evidence regarding her proposed endeavor or its prospective impact rising to the level of national importance. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

In addition, the Petitioner does not demonstrate how her proposed endeavor will substantially benefit the field of industrial engineering, as contemplated by *Dhanasar*: "[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." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner does not offer any evidence that her skills differ from or improve upon those already available and in use in the United States.

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.* at 890. However, the Petitioner has not established that her endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her company, the record does not show that the benefits to the U.S. regional or national economy resulting from her endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar. Id.*

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. The Petitioner has not provided evidence to support that her work as a business industrial engineering expert working

for one or more employers would have substantially positive effects or would otherwise have broader implications beyond those employers.

Based on the foregoing, we find that the Petitioner did not establish substantial merit and national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's arguments regarding her eligibility under the second and third 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 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 find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.