U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25674041

Date: MAR. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 record established that the Petitioner qualified for classification as a member of the professions holding an advanced degree, she 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. 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." Id.

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 Dhanasar, 26 I&N Dec. 884 (AAO 2016). Dhanasar states that after EB-2 eligibility has been established, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates three prongs: (1) that the petitioner's proposed

[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).

endeavor has both substantial merit and national importance; (2) that the petitioner 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.

II. ANALYSIS

The Director concluded 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 a labor certification, would be in the national interest.

The Director found that while the Petitioner established that the proposed endeavor met the substantial merit portion of the first prong set forth in the Dhanasar analytical framework, she had "not established that the proposed endeavor is of national importance", as required by the first Dhanasar prong, "or that on the balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification", as required by the third Dhanasar prong. For the reasons discussed below, the Petitioner has not established the national importance of her proposed endeavor.

The first prong, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889.

Initially, the Petitioner indicated that she would work as a marketing director specializing in Brazilian travel for the U.S. travel and tourism industry. The Petitioner asserted that, based on her extensive marketing experience in the Brazilian tourism industry, she "will be able to provide a direct connection for companies in the [United States], with companies in Brazil," and will provide "consultancy in the travel and tourism industry." To further illustrate the nature of her eligibility for the national interest waiver based on her proposed endeavor, she provided recommendation letters; previous employment experience letters; and an expert opinion letter relating to her degree, the national importance of her proposed endeavor as a marketing director in the travel and tourism industry, and her being well positioned to advance the proposed endeavor.

In a request for evidence (RFE) notice, the Director informed the Petitioner that she "failed to provide specific insight as to what she intends to do as a [m]arketing [d]irector in the industry." The Director explained that without further detail into the Petitioner's proposed endeavor, the Petitioner has not demonstrated her endeavor has substantial merit, the endeavor is of national importance, she is well-positioned to advance the endeavor, and on balance, it would be beneficial to the United States to waive the requirements of a job offer and, thus, the labor certification.

In response to the RFE, the Petitioner proposed a different endeavor, marketing manager and entrepreneurship by starting a new food business in the [redacted] Florida area called [redacted] The Petitioner explained the food business would specialize "in healthy eating

with fresh, gluten-free, quick-to-prepare foods to create memorable experiences" for local and tourist costumers. Within three years, the Petitioner intends to form a brand recognized throughout the United States and franchise it, and within five years, the business and its brand would be "a competitive and recognized group in the [United States]." With the RFE reply, the Petitioner submitted a business plan explaining the market opportunity for this business, including the general rise in diseases and the impact the COVID-19 pandemic had on "the usage of gluten-free products due to rising health and wellness-related concerns among consumers." The Petitioner intends "to strengthen and improve relations with American consumers by combining [m]arketing [m]anagement with [e]ntrepreneurship,. . . [t]his way [she] will be able to access essential areas for the development of the healthy food products segment that . . . have not yet been potentially explored."

In the decision denying the petition, the Director found the evidence in the record did not sufficiently demonstrate that the Petitioner's field of endeavor, marketing director for the travel and tourism industry, was of national importance, as set forth in the first prong of the Dhanasar analytical framework. The Director explained that the record did not support that the Petitioner's "business stands to impact the regional or national population at a level consistent with having national importance"; "her particular work would have broader implications for the field"; and "her proposed endeavor work will have potential prospective impact".

However, the Director's decision did not address that the Petitioner provided two different descriptions for her fields of endeavor, initially indicating in her petition that she would be a marketing director in the travel and tourism industry, and later indicating in the RFE reply that she would be a marketing manager and entrepreneur for a proposed new food company and brand business. The Petitioner's proposed endeavor is material to whether the endeavor has substantial merit and is of national importance. See Matter of Michelin Tire Corp., 17 I&N Dec. 248 (Reg'l Comm'r 1978); see also Dhanasar, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. See Matter of Izummi, 22 I&N Dec. at 175; see also Matter of Katigbak, 14 I&N Dec. at 49.

When responding to the Director's RFE, the Petitioner introduced a new proposed endeavor rather than establishing the national importance of the proposed endeavor described in the initial petition. The Petitioner's new plans in the RFE reply, and contended in this appeal, describe a new set of facts regarding the proposed endeavor. The Petitioner's proposed endeavor as a marketing manager and entrepreneur for a new food company and brand business were presented after the filing date and cannot retroactively establish eligibility. Accordingly, we find that the Petitioner made an impermissible material change to her proposed endeavor. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. See 8 C.F.R. § 103.2(b)(l). Therefore, on appeal, we will consider if the record demonstrates that proposed endeavor submitted with the initial filing, marketing director in the travel and tourism industry, has national importance. We conclude it does not.

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. Dhanasar, 26 I&N Dec.

at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor, as initially described, stands to sufficiently extend beyond her employer or business and its clientele to impact the travel and tourism industry, or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she initially proposes to undertake as a marketing director specializing in travel to Brazil for the U.S. travel and tourism industry, offers original innovations that contribute to advancements in her industry or otherwise has broader implications for her field.

Although the Petitioner provided information and statistics regarding the economic impact of the global growth of the travel and tourism industry,[2] in determining national importance, the relevant question is not the importance of the industry in which the Petitioner will work; instead, we focus on the Petitioner's proposed specific endeavor, and its impact on the U.S. economy. See Dhanasar, 26 I&N Dec. at 889. In addition, she has not sufficiently demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. While the Petitioner's initial statements reflect her intention to provide marketing expertise into the U.S. travel and tourism industry, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. Moreover, subsequent material changes to the proposed endeavor cannot retroactively establish eligibility at the time of filing, and the record contains conflicting information about the basic nature of the proposed endeavor.

The Petitioner also cites to her expertise and record of success in previous projects to demonstrate the national importance of her proposed endeavor. Her education and prior experience, however, are considerations under Dhanasar's second prong, which "shifts the focus from the proposed endeavor to the foreign national." Id. The issue here is whether the Petitioner has demonstrated the national importance of her proposed work.

For all these reasons, the Petitioner's proposed work does not satisfy the "national importance" element of the first prong of the Dhanasar framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate 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 conclude that she has not established she is eligible for, or otherwise merits, 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.

[2] While we may not discuss every piece of evidence submitted, we have reviewed and considered the record in its entirety.