U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25937070

Date: MAR 31, 2023

Appeal of Nebraska Service Center Decision

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

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

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualified as an advanced degree professional, 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;

[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).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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 Petitioner initially provided a statement indicating:

> I seek employment as independent consultant in the field of corporate law related to oil and gas industry in the U.S. Oil and Gas industry is one of a key source of economic growth in United States. This industry is very important as its continuous development leads to lower gasoline and energy costs for the average American. When Americans spend less on utilities and gasoline, they begin to spend more at their local businesses which positively impacts the economy as a whole.

The Petitioner also submitted employment verification letters as well as gratitude letters from a company for whom she provided services in Russia.

The Director determined that the initial evidence was insufficient to demonstrate that that the Petitioner was eligible for a national interest waiver, and issued a request for evidence (RFE). In response, the Petitioner submitted a copy of the business plan for her newly formed company, [redacted] as well as documentation demonstrating the company's incorporation. The Petitioner also submitted an expert opinion letter from [redacted] Associate Teaching Professor of Law at [redacted] University School of Law.

With regard to the proposed endeavor, counsel for the Petitioner stated that the Petitioner "is seeking employment in the United States as an entrepreneur in the field of business consulting in the oil and gas industry." Counsel further stated:

> Business consulting in the oil and gas industry is a significant source of economic growth. Business consulting in the oil and gas industry continues to be critical to the United States, as its health has a significant impact on the US economy in various ways.
>
> By carrying out the [Petitioner's] proposed endeavor of being an independent business owner in the field of business consulting in the oil and gas industry in the United States, the [Petitioner] will help contribute to the country's economy. Through the execution of

> her proposed endeavor, the [Petitioner] will directly help create additional jobs for American workers, a clear and substantive impact that speaks to the national importance of said endeavor. In addition, by contributing to the growth of the American economy, the [Petitioner] will contribute significantly to the societal welfare of American citizens. Furthermore, the [Petitioner's] work is clearly and directly related to a number of government initiatives, programs, and departments, all of which indicate that the company's work improves the quality of these American households and is therefore of national importance and will be in the field of substantial merit.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, counsel for the Petitioner submits new evidence as well as a brief asserting that the decision to deny the petition was in error and that the Petitioner is eligible for a national interest waiver.

Preliminarily, we note that the Petitioner's initial description of the proposed endeavor did not include plans to work as the chief executive officer of her recently formed consulting company; instead, the Petitioner initially claimed to "seek employment as [an] independent consultant in the field of corporate law related to oil and gas industry in the U.S." We conclude the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *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. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).[2] A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Because the Petitioner's [redacted] cannot establish eligibility, we need not address it further.

On appeal, counsel for the Petitioner provides an undated business plan for a new entity, [redacted] and states that the Petitioner will lead the operations of this company as its chief executive officer. According to counsel, [redacted] "will provide expert consulting services to businesses operating in the Oil and Gas Industry." Despite asserting in response to the RFE that the Petitioner would act as the chief executive officer of [redacted] no further reference to this company is made on appeal. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, we note that when 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. 8 C.F.R. § 103.2(b)(1).

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.

[2] The business plan submitted in response to the RFE was drafted in February 2022, over two years after the filing of the petition.

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 [redacted] 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 Petitioner's new assertions on appeal regarding her role in yet another company not previously identified likewise present a new set of facts material to her eligibility and contradict the claims set forth in her initial supporting statement as well as her RFE response. It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Here, in addition to vaguely claiming that she intends to provide consulting services in the oil and gas industry, the Petitioner has provided three contradictory claims regarding the proposed endeavor. It is unclear whether her intent is to work as an independent consultant as originally stated, or whether she intends to work as the chief executive officer for one or more consulting companies. Because the Petitioner has not resolved the inconsistencies regarding her proposed endeavor, we are unable to determine the specific endeavor she proposes to undertake or whether that endeavor has national importance as outlined in *Dhanasar*. 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.

We acknowledge the Petitioner's submission of [redacted] letter in support of her eligibility for a national interest waiver. [redacted] recited the Petitioner's education and employment history, and provided a summary of the U.S. oil and gas industry. [redacted] concluded that the Petitioner's knowledge and expertise in the field of oil and gas consulting will be beneficial to the U.S. oil and gas sector.

The letter, however, provides an overly vague recitation of the Petitioner's reputation and abilities, and does not provide a basis for [redacted] conclusory assertions regarding the national importance of the Petitioner's proposed endeavor. While she commented generally on the oil and gas industry, she did not support her conclusions regarding the national importance of the Petitioner's proposed endeavor, and repeats much of the information the Petitioner already provided in her resume and personal statement without adding sufficient independent analysis. Moreover, despite the Petitioner's claim that she would be operating her own consulting company as its chief executive officer, [redacted] makes no reference to this claim. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately

responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor and why it would have national importance.

In this matter, the information in the record—that may establish eligibility—is not well defined. The Petitioner does not sufficiently identify the specific endeavor she will undertake. Moreover, the evidence does not establish the location where the proposed endeavor will operate and how it will generate income, and 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 he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.