U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29226657

Date: JAN. 4, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but 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 a member of the professions holding an advanced degree 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 Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

A document identified as a personal statement, submitted at the time of filing, describes the endeavor as a "plan to work as the [f]itness [d]irector for [redacted], located in [redacted], Texas." The document further states that the endeavor would accomplish the following:

- Guide individuals to improve their health, fitness, and athleticism.
- Create customized training plans to maximize athletic performance.
- Enable athletes to maximize speed, strength, endurance, and agility.
- Provide guidance to personal trainers, coaches, and fitness instructors.
- Formulate tailored exercise plans and training activities for those recovering from injuries or who have other specialized considerations.

The document also provides generalized information about the benefits of fitness training.

In response to the Director's request for evidence (RFE), the Petitioner submitted a second document identified as a personal statement. This document describes the endeavor as a plan to "continue utilizing physical education (comprised of sports science, kinesiology, and fitness direction) to produce, maintain, and maximize U.S. athletic talent." The document elaborates that, at the time of the RFE response, the Petitioner worked as the "[f]itness [d]irector for [redacted], a U.S. martial arts academy and fitness training center," as initially indicated the endeavor would entail. The document further asserts that the endeavor "will result in greater national pride, benefitting societal welfare and cultural enhancement[;] expand your country's prestige in international events[;] increase the economic activity generated by the sport's competitive events . . . in wide-ranging states around the U.S. . . . all of which produce large amounts of revenue when taxed by the state[; and] maximize the U.S. jobs created by each competition." Again, the document discussed generalized information regarding the benefits of fitness training.

We note, however, that the documents identified as personal statements submitted both initially at the time of filing and in response to the Director's RFE contain conspicuous elements that cast doubt on whether the Petitioner wrote them and, thus, that they reflect her thoughts and intentions regarding the

proposed endeavor. Specifically, neither document appears to have been signed by the Petitioner. Instead, the signature on the final page of the initially submitted statement is fuzzy and pixelated, not matching the sharp text on the remainder of the page, indicating that it is a low-resolution image of a signature that could have been attached to the document in a word processor by any individual, rather than indicating that the Petitioner signed the document herself. *See generally* 8 C.F.R. § 103.2(a)(2) (describing acceptable signatures on paper documents, in relevant part, as "handwritten"). In turn, the signature on the final page of the statement submitted in response to the Director's RFE is merely an italic font that could have been typed in a word processor by any individual, rather than indicating that the Petitioner signed the document herself. *See id.* Moreover, neither of the purported signatures on the personal statements match the Petitioner's signature on the Form I-140, Immigrant Petition for Alien Workers. We further note that both of the purported personal statements each contain dozens of footnotes written in Bluebook style, which is generally unknown and unused outside of the legal profession, specifically in the United States. The record does not reconcile how or why a Brazilian martial arts fitness director would have learned the Bluebook citation style and, moreover, would have chosen to use that citation style on her purported personal statements.

The inconsistencies among the Petitioner's ostensible signatures on the Form I-140 and the purported personal statements, and the conspicuous citation style used in those documents, cast doubt on whether the Petitioner actually wrote them and, thus, that they reflect her thoughts and intentions regarding the proposed endeavor. This doubt undermines the reliability and sufficiency of the personal statements, and of the remainder of the documents in the record. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

The Director acknowledged that "it appears the proposed endeavor has substantial merit." However, the Director observed that "the evidence of record does not convey an understanding of how the [P]etitioner's proposed employment activities stand to have a broader impact on [her] field." The Director further observed that "the [P]etitioner has not demonstrated that the specific endeavor that she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation." The Director found that "the [P]etitioner has not established that her proposed work has implications beyond her employer (or prospective employer or self-owned company), their prospective business partners, alliances, and/or customers at a level sufficient to demonstrate the national importance of her endeavor." Thus, the Director concluded that "the [P]etitioner has not met [her] burden in meeting the 'national importance' element of the first prong of the Dhanasar framework." *See Matter of Dhanasar*, 26 I&N Dec. at 888-90. The Director further concluded that the record did not satisfy the second and third *Dhanasar* prongs. *See id.* at 888-91, for elaboration on these three prongs.

On appeal, the Petitioner asserts, in relevant part, that "[t]he documentation proves, by a preponderance of the evidence (more likely than not), that [her] proposed endeavor has national importance." The Petitioner quotes statements submitted in response to the RFE, which themselves quote or otherwise reference generalized information regarding athletic competitions and the benefits of fitness training. More specifically, the Petitioner asserts that her personal statements, an opinion letter written by [redacted], and letters from the Petitioner's employer and clients satisfy the first *Dhanasar* prong.

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 id.* 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.

We have reviewed the record in its entirety; however, it does not establish how the proposed endeavor of working as the fitness director of the martial arts academy and fitness training center, as described in the record, may have national importance.

First, the purported personal statements are unreliable and insufficient for the reasons discussed above. *See Matter of Ho*, 19 I&N Dec. at 591. Even to the extent that the statements may be reliable and sufficient—which they are not—they do not establish how the specific endeavor the Petitioner proposes to undertake may have national or even global implications within the particular fields of martial arts and fitness training, or within any other particular field, how the specific endeavor may have substantial positive economic effects, or how it may otherwise have national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Instead, the statements contain numerous references, which we again note are conspicuously cited in the Bluebook style, that address generalizations regarding fitness and athletic competitions, rather than addressing the Petitioner, the specific endeavor she proposes to undertake, and how any particular aspect of the specific endeavor may have national importance. *See id.* For example, although the statement submitted in response to the Director's RFE asserts that her endeavor would "maximize the U.S. jobs created" in hypothetical competitions in which unspecified athletes potentially trained by the Petitioner may compete, neither the purported personal statements nor the remainder of the record establish the causal nexus between the Petitioner's fitness director duties and the creation of some unspecified number of indirect—and apparently temporary—jobs. *See id.* The purported personal statements, and the remainder of the record, also do not clarify how the specific endeavor the Petitioner proposes to undertake may have any more significance to those indirectly created jobs as compared to the trainers of any of the other athletes who compete in the same competitions, in order to indicate how the specific endeavor the Petitioner proposes to undertake may have implications within the fields of martial arts and fitness training that may be distinguishable from the implications of the other participating athletes' fitness directors. *See id.*

Next, the letter from [redacted] bears issues similar to those of the purported personal statements, discussed above. The ostensible signature on the final of the letter's three unnumbered pages is pixelated, consistent with a low-resolution image of a signature that could have been attached to the document in a word processor by any individual, rather than indicating that [redacted] signed the document himself. *See generally* 8 C.F.R. § 103.2(a)(2). This casts doubt on whether [redacted] actually wrote the letter and, thus, that it reflects his opinions regarding the Petitioner and her proposed endeavor. This doubt undermines the reliability and sufficiency of the letter, and of the remainder of the documents in the record. *Matter of Ho*, 19 I&N Dec. at 591. Even to the extent that the opinion letter may be reliable and sufficient—which it is not—it focuses on the Petitioner's qualifications and prior experience, in addition to generalizations regarding fitness and

athletic competitions, rather than establishing how the specific endeavor the Petitioner proposes to undertake may have national or even global implications within any particular field, how the specific endeavor may have substantial positive economic effects, or how it may otherwise have national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

Next, the letters in the record from the Petitioner's employer and clients describe how the proposed endeavor may benefit her employer and her clients. For example, the letter from the Petitioner's employer asserts that she "has greatly expanded our clientele by providing instructional quality that clients are unable to obtain from any other professional." In turn, letters from the Petitioner's clients discuss how she helped them recover from their particular physical injuries or lose body weight through fitness training. They also opine that the Petitioner could assist unspecified other clients with their potential fitness needs and athletic aspirations. However, the letters from the Petitioner's employer and clients do not establish how the specific endeavor the Petitioner proposes to undertake may have national or even global implications within the particular field of martial arts and fitness training, or within any other particular field, how the specific endeavor may have substantial positive economic effects, or how it may otherwise have national importance. *See id.*

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) (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 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.