U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28559841

Date: DEC. 4, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the fitness industry, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 the Petitioner had not established eligibility for the underlying classification or 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.

To establish eligibility for a national interest waiver, petitioners must 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.[1] Section 203(b)(2)(B)(i) of the Act. In addition, petitioners must show the merit of 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

[1] On appeal, the Petitioner does not contend that she qualifies as an individual of exceptional ability. Accordingly, we deem this issue abandoned. *See Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *l, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiffs' claims to be abandoned as he failed to raise them on appeal to the AAO).

[2] *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).

- On balance, waiving the job offer requirement would benefit the United States.

The Petitioner proposes to work as a fitness director for her company in Florida. She further states she will be "providing consultation to U.S. coaches, team managers, personal trainers, fitness instructors, and athletes involved in high-performance athletic teams" and "will also consult U.S. clients who [to] seek to improve health and fitness using science-based training methods."

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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. *Id.* For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify. *Id.*

In her decision, the Director determined that the Petitioner's proposed endeavor is of substantial merit, and we agree. Turning to the national importance of her endeavor, the Director concluded that the Petitioner did not establish that her proposed endeavor has national importance.

On appeal, the Petitioner contends that the Director erred in finding that the record does not establish that her proposed endeavor will have broader implications in her field, substantial economic benefits, significantly impact employment levels, or have national or global implications. In support, the Petitioner relies on her previously submitted personal statement, letters of support, and letters from clients. She does not, however, provide new evidence or arguments which overcome the Director's determination. For example, as noted by Director, while the statement and letters give insight into the Petitioner's past and current plans, they lack specificity and detail and are not supported by independent, objective evidence to establish that the proposed endeavor has national importance. We note that 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. Similarly, the record here does not establish that the Petitioner's job as a fitness director would impact the industry more broadly, as opposed to being limited to her clients.

Therefore, we adopt and affirm the Director's decision as it relates to this prong. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, she has not demonstrated eligibility for a national interest waiver, as a matter of discretion. 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 the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad,* 429 U.S. 24, 25

(1976). We also reserve a determination on the Petitioner's eligibility for the underlying immigrant classification.[3]

ORDER: The appeal is dismissed.

[3] The Petitioner provided a copy of her Brazilian *Titulo de Bacharel* in physiotherapy and transcript from [redacted] University indicating that she began her studies in July 2006 and completed them in 2008. According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE) entry for the *Título de Bacharel,* it is awarded following three to five years of undergraduate study and only the four-year program is the foreign equivalent of a U.S. bachelor's degree. While we acknowledge the submission of an academic evaluation concluding the Petitioner's *Título de Bacharel* is the foreign equivalent of a U.S. bachelor's degree, the evaluation inexplicably states that the Beneficiary's program lasted four years and ended in 2010 and does not address or explain the discrepancy with the dates from the provided transcript. As such, the Petitioner has not established that she is a member of the professions holding an advanced degree or the equivalent in the field. In any future filing in this matter, the Petitioner should address this issue and submit appropriate documentation.

We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013). For more information, visit https://www.aacrao.org/edge.