U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29200192 / 29241868

Date: DEC. 08, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the tourism industry, seeks employment-based second preference (EB-2) 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 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 denied the petition, concluding that although the record established the Petitioner qualifies for the EB-2 classification, it did not establish the national importance of the proposed endeavor; the Petitioner is well positioned to carry out his endeavor; or that it would be in the United States' interest to waive the requirement of a labor certification. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

Once 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, 889 (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[1], 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. The EB-2 Classification

The Director determined the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional; however, upon de novo review, we withdraw the Director's finding on this matter and instead conclude the Petitioner has not established eligibility for the EB-2 classification as an advanced degree professional.[2]

Although the Petitioner submitted sufficient evidence to establish that she earned the foreign equivalent of a U.S. bachelor's degree, the evidence supporting her five years of progressive post-baccalaureate experience is insufficient. We reviewed the Petitioner's business ownership documents and acknowledge she is a part-owner and shareholder of a foreign business. While these documents establish ownership, they do not demonstrate the Petitioner's work experience. The Petitioner's business partner and co-owner authored a letter identifying when they registered and began their business. The author notes that she herself worked in the business from February 1999 to April 2008, while the Petitioner worked in the business from February 1999 to an unknown date in 2015. This letter, even in conjunction with other evidence, is insufficient to establish that the Petitioner has at least five years of progressive post-baccalaureate experience.

Although she may have remained co-owner of the business beyond 2008, the author stated that she ended her employment in the business in 2008. The author does not explain or demonstrate how she maintained knowledge of the Petitioner's work experience after departing from her employment in the business. Therefore, we question the author's knowledge of the Petitioner's work experience gained after 2008. This is important, as the Petitioner earned her foreign degree in February 2007 and therefore any work experience gained prior to this time would not be considered post-baccalaureate in nature. The author lists some bulleted duties to establish the Petitioner's experience in the business, but the letter suggests that the Petitioner performed all of the bulleted duties during the 1999 to 2015 period. The author does not explain how these activities were progressive in nature rather than simply ongoing. Moreover, based upon their nearly identical names, the Petitioner and her co-owner appear to be family members. Documents from a family member, while not without weight, do not appear to be objective. While this is not dispositive, the author's claims concerning the Petitioner's duties are

[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).

[2] The Petitioner has not asserted that she qualifies as an individual of exceptional ability. Therefore, we will not discuss whether the evidence establishes her eligibility under any of the six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

also not corroborated with independent evidence of ongoing business-related functions, such as client contracts and letters, federal tax documents, or paid invoices matched with bank statements.

For these reasons, we conclude the evidence is insufficient to establish the Petitioner has at least five years of progressive post-baccalaureate experience. As she has not established her eligibility for the underlying EB-2 classification, she has not established eligibility for a national interest waiver.

B. National Importance

While the appeal may be dismissed on the threshold issue of the underlying EB-2 classification alone, we nevertheless provide additional analysis of the Petitioner's eligibility under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor the individual 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. Dhanasar, 26 I&N Dec. at 889. We reviewed the Petitioner's business plan, recommendation letters, performance awards, and definitive statement, all of which emphasize the Petitioner's education, experience, and skill. However, the Petitioner's personal and professional qualifications relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor the Petitioner proposes to undertake has substantial merit and national importance under Dhanasar's first prong.

The Petitioner proposes to continue working as an entrepreneur in the field of tourism. Her work involves developing "tourist activity, specifically focused on the receptive market, selling U.S. attractions to foreign markets – especially through the elaboration, planning, creation, and commercialization of American-based travel packages." She also explained, "my overall proposed endeavor in the United States is to promote business success throughout the country's tourism industry, namely by launching and expanding my own company operations." She asserted, "[m]y company will primarily cater to Brazilian and South American tourists visiting or wanting to visit the U.S. It will do this by creating affordable and accessible travel packages to various vacation destinations across the country, thereby elevating the tourism industry . . . ."

The Petitioner intends to "contribute to the U.S. economy." Specifically, she asserted that "[t]hrough my proposed endeavor, I will not only foster U.S. economic prosperity, but I will also contribute toward nationally important areas, such as increased foreign direct investment (FDI) – given my focus on international tourism. I will enhance employment opportunities for U.S. workers as well as spur national and international productivity, including connectivity between the U.S. market and other countries, explicitly those in Latin America."

The Petitioner's personal plan and statement, letters from Counsel, and the numerous articles and reports rely upon the economic importance of immigrants, entrepreneurs, small businesses, and tourism as sufficient to establish the national importance of the proposed endeavor. While relevant,

these factors do not necessarily establish the national importance of the proposed endeavor. 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." See Dhanasar, 26 I&N Dec. at 889. Accordingly, the Petitioner's reliance on background information and statistics concerning the economic impact of immigrants, entrepreneurs, small businesses, and the tourism industry is misplaced. Likewise, the Petitioner mentioned the FDI involved in tourism and the monetary value of the tourism industry. She explained that tourism cuts across multiple industries, such as the airline, hotel, and retail industries. While we agree that tourism is important to the U.S. economy, the Petitioner's reliance on it to establish the national importance of her proposed endeavor again emphasizes the industries and the professions within them, rather than her specific proposed endeavor.

Although the Petitioner asserted that she has made contributions to the field, we find little evidence to support this conclusion. Some of the recommendation letters suggest that her tourism work in the past had local and national impact; however, none of the letters' authors provide sufficient details regarding the impact of her work, nor do they offer corroborating evidence to support their claims. While [redacted] wrote that the Petitioner's projects had impact on the community, the letter does not explain how this impact was specifically connected and attributable to the Petitioner's work, nor does the letter offer detail to substantiate the claimed impact of increases in local commercial income and tourism. The author further stated that the Petitioner has a "unique methodology for supporting national interest with respect to the environment" but offers little information on what the Petitioner's methodology is or how it is unique.

Likewise, [redacted] wrote that the Petitioner's work created an increase in business as well as in local and national productivity; however, the letter does not contain specific information to support these statements. [redacted] also asserted that the Petitioner's niche area impacts multiple industries, but the letter contains no specific examples to illustrate, nor did the author explain what the Petitioner's "unique skills and methods" are such that we can determine whether they impacted the field. The Petitioner asserted that she managed tourism internship programs and training opportunities for students. While she states that her work led to the trainees' and interns' employment in the industry, she has not substantiated this claim with sufficient details or corroborating evidence. Nor has she demonstrated how her training programs had an impact extending beyond just the students and interns involved. Overall, we conclude the Petitioner's evidence of her past impact to the field is vague and unsubstantiated.

The Petitioner's evidence of the endeavor's future impact is similarly vague and unsubstantiated. The Petitioner plans to offer affordable travel packages and better customer service. However, she has not explained how her specific business functions in a superior or more cost-effective manner than other, preexisting travel and tourism agencies. Although the Petitioner claims her business is better than other businesses offering similar services, she has not supported this claim with details about how this will occur. For instance, the Petitioner has not provided a cost analysis of the Petitioner's travel packages in comparison to the same travel package other companies offer.

The Petitioner contends that her endeavor will create tax revenue and jobs. As the endeavor's projected revenue and job creation figures necessarily depend upon the number and size of the Petitioner's clients, a simple claim of what she hopes her business will achieve amounts to little more

than conjecture. Even if the endeavor's revenue and job creation projections were more than conjecture, they nevertheless do not suggest that the endeavor would operate on a scale rising to the level of national importance. Further, the Petitioner does not offer an evidentiary basis to conclude that the "ripple effects" of her proposed endeavor will, for instance, affect the U.S. gross domestic product or tax revenues. While any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity her proposed endeavor generates would rise to the level of affecting the U.S. economy. The record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. See id. at 890.

On appeal, the Petitioner argues the Director did not properly consider the evidence and applied a heightened standard of proof in the adjudication of the petition. Specifically, the Petitioner states the Director did not give due consideration to her experience and professional qualifications; professional plan and statement; letters of recommendation; and industry reports and articles. In support, the Petitioner relies upon the evidence and arguments she previously submitted. However, as explained above, the Petitioner has not offered sufficient evidence to support her claim that the endeavor has national importance and therefore, she has not overcome the Director's determination.

Because the record does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of eligibility under the second and third prongs outlined in Dhanasar would serve no meaningful purpose.

III. CONCLUSION

The record does not establish that the Petitioner qualifies for the underlying EB-2 classification, nor does it establish the national importance of the proposed endeavor. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "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). The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.