U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28560043

Date: NOV. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager and entrepreneur, 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 Texas Service Center denied the petition, concluding that the Petitioner established she was an advanced degree professional, but had not demonstrated 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.

"Advanced degree" means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, 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. EB-2 Visa Classification

The Director determined that the Petitioner is a member of the professions holding an advanced degree. However, upon de novo review, we disagree.

In addition to the definition of "advance degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." The record indicates that the Petitioner's foreign baccalaureate degree is equivalent to a U.S. baccalaureate degree in physiotherapy. However, the Petitioner did not submit the evidence required to establish five years of qualifying work experience. The Petitioner provided the following employment verification letters:

- [redacted] – November 2013 to present;
- [redacted] – July 2014 to July 2015;
- [redacted] – March 2013 to December 2013;
- Hospital Universitario [redacted] – August 2011 to June 2012; and
- [redacted] – August 1998 to December 2008.

As the Petitioner obtained her baccalaureate degree in August 2012, the letters from Hospital Universitario [redacted] do not demonstrate *post-baccalaureate* experience. Moreover, the letters from [redacted] are not from former or current employers as they are prepared by an accountant and a co-worker. Furthermore, none of the letters indicate whether the employment was full-time. As such, the letters do not meet the requirements of 8 C.F.R. § 204.5(k)(3)(i)(B).

In addition, the Petitioner submitted an education and work experience equivalency evaluation which states that she has the equivalent of a U.S. master's degree in business administration. The evaluation bases this conclusion on the premise that the Petitioner has over five years of post-baccalaureate work experience in business administration, as required to show equivalency under 8 C.F.R. § 204.5(k)(2), but counts both her pre-baccalaureate work and her non-business administration work towards this

[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).

total without providing any reasoning as to why these constitute qualifying work experience.[2] Further, the evaluator relied upon the Petitioner's resume with no mention that he reviewed any letters, as required by 8 C.F.R. § 204.5(k)(2).[3] Because this evaluation is not in accord with the evidence of record or the relevant regulation, we will not grant it any evidentiary weight. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (stating that we may give less weight to or decline to accept an expert opinion that is not in accord with other information or is in any way questionable). The Petitioner has not submitted evidence establishing that she qualifies as an advanced degree professional through a combination of a baccalaureate degree and five years of work experience in her specialty. 8 C.F.R. § 204.5(k)(3)(i)(B).

For the foregoing reasons, the Petitioner has not established eligibility for the EB-2 classification as an advanced degree professional and we withdraw the Director's finding on this issue.

The Petitioner also claimed she qualifies for EB-2 classification as an individual of exceptional ability. However, the Director did not make a finding as to whether the Petitioner qualifies as an individual of exceptional ability. Since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether she qualifies for EB-2 classification as an individual of exceptional ability for future consideration should the need arise. *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 alternate issues on appeal where an applicant is otherwise ineligible).

B. National Interest Waiver

The Petitioner proposes to continue her career in the United States as a general and operations manager and open a Pilates academy in Florida. She further states that her Pilates academy will "provide services such as physical preparation, posture correction, breathing, and body care, where people will find postural exercise practices."

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that 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.

The Director determined that the evidence demonstrated the Petitioner's proposed endeavor has substantial merit and we agree. However, the Director determined that the evidence did not establish that the proposed endeavor has national importance.

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[2] The evaluation also refers to what it calls "the '3-for-1 Rule' [which] states that three years of relevant work experience is equal to one year of education." However, this calculation relates to equivalence to a baccalaureate degree for beneficiaries of H-1B specialty occupation visas. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). We further note that even under this regulation, equivalence to a master's degree requires five years of relevant work experience, not three. *Id.*

[3] The section regarding her professional experience mirrors the language from her resume.

On appeal, the Petitioner asserts that her proposed endeavor "will be directly creating jobs and contributing to the nation's economy through taxes generated" and "will broadly enhance societal welfare or cultural enrichment." The Petitioner relies on her 21 years of experience in physiotherapy and business administration and management to establish the national importance of her proposed endeavor. However, the Petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of her proposed work.

In addition, the Petitioner emphasizes the importance of small businesses and states that "small businesses create jobs, spark innovation, and provide opportunities for many people." When determining national importance, however, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance, for example, because it has national or even global implications within a particular field." *Id.*

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. Although the Petitioner's business plan reflects her intention to provide Pilates training to her company's clients, 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. 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. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her clientele to impact the Pilates industry more broadly at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, she has not shown that her company's business activity stands to provide substantial economic benefits to Florida or to the United States. The business plan does not demonstrate that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not provided evidence to establish that the area in which the company will operate is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. While the business plan indicates that the Petitioner's company will hire U.S. employees and generate a revenue of over $900,000 within five years, the plan does not sufficiently detail the basis for the revenue and staffing projections depicted. The Petitioner's unsupported statements are insufficient to meet her burden of proof. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Finally, we acknowledge the opinion letter from an adjunct associate professor at [redacted] University. The author asserts that the Petitioner's proposed work has national importance, but he does not base his conclusion on the national importance of the Petitioner's specific endeavor. Although he recites the Petitioner's career history and accomplishments, and future staffing and revenue from the business plan, his findings stem from the significance of "The National Physical Activity Initiative," and entrepreneurship. The letter does not contain sufficient information and explanation of the Petitioner's proposed endeavor, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work in the Pilates industry offers broader implications in her field or substantial positive economic effects for our nation that rise to the level of national importance. The letter therefore is insufficient to establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs, and we hereby reserve them.[4] The burden of proof is on the Petitioner to establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner has not done so here and, therefore, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] See Id.