U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28582684

Date: NOV. 20, 2023

Appeal of Texas 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. 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 record did not establish that a waiver of the job offer requirement is 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 immigrant classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[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 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

The Director denied the petition, concluding that the Petitioner established only the substantial merit of the proposed endeavor. The Director concluded that the Petitioner did not establish the endeavor's national importance, that she is well-positioned to advance it, or that, on balance, waiving the job offer requirement would benefit the United States. The Director did not make a finding as to the threshold question of the Petitioner's eligibility for the EB-2 classification. On appeal, the Petitioner submits additional evidence and a brief in which she asserts that she has established her eligibility for a national interest waiver.

A. Qualification for the EB-2 Classification

The Petitioner seeks to qualify for the EB-2 classification as an advanced degree professional, claiming that she has obtained the foreign equivalent of a bachelor's degree followed by at least five years of progressive experience. *See* 8 C.F.R. § 204.5(k)(2) (a bachelor's degree or the foreign equivalent followed by at least five years of progressive experience in the specialty is equivalent to a master's degree). However, the Director noted in a request for evidence (RFE) that there are insufficiencies and inconsistencies in the evidence relating to the Petitioner's work experience. Specifically, the Director noted that one of the employment letters, from a company called [redacted] was insufficient because it did not provide a detailed description of the Petitioner's job duties. The Director also noted that the other employment letter, from a company called [redacted] was inconsistent with the information on the Form ETA-750B submitted in support of the petition, with the employment letter stating that the Petitioner was employed with [redacted] from December 2010 to February 2016 in a single position, and the Form ETA-750B stating that the Petitioner was employed with [redacted] from October 2011 to February 2016 in two different positions. The Director further noted that both the employment letter and the Form ETA-750B were inconsistent with the information provided in a prior non-immigrant visa application filed by the Petitioner in 2016. The non-immigrant visa application states that the Petitioner worked at [redacted] only from July 2009 to February 2011. The Director requested additional evidence to resolve these inconsistencies and to establish the Petitioner's eligibility.

As noted above, the Director did not make a finding in the decision as to the Petitioner's eligibility for the EB-2 classification, nor did the Director discuss whether the inconsistencies were satisfactorily resolved by the RFE response. In the RFE response, the Petitioner resubmitted the same employment letters again but also submitted two "letters of recommendation" that relate to her employment history.

One letter is from an individual who states that they were the Petitioner's supervisor at [redacted] This letter claims that the Petitioner held three different human resources positions from June 2009 to February 2016. Although the letter attempts to clarify the dates that the Petitioner had different roles, much of the letter discusses the general hiring and selection process and the purpose of a human

resources department, rather than describing the Petitioner's duties.[2] As to the specifics of the Petitioner's duties, the letter writer states little more than that the "work that [the Petitioner] did with us was extremely important and relevant" and that the Petitioner helped with "the implementation of [p]ositions and [s]alaries, obtaining important certifications for the company, such as ISO 9001 and ISO 14001." Additionally, although the Petitioner provided this additional letter, she did not provide any statement or clarification to address why the initial [redacted] employment letter provided different information, or to address the inconsistencies with the non-immigrant visa application and the Form ETA-750B.

The other letter is written by the Petitioner's parent and states that the Petitioner has worked for them at [redacted], a shop in Brazil that sells lottery tickets, from 2012 to the present. The letter states that the Petitioner has performed duties such as managing reports, accounts receivable and payable, and cash closing. The letter also claims that the Petitioner, who appears to be residing in the United States, is remotely "managing and carrying out strategic planning" to "provide focus and greatly optimize the work of employees." Although this letter provides more information than the previous letter, it does not state the time periods during which the Petitioner worked in person at the shop versus working remotely or sufficiently explain the Petitioner's remote job duties. Additionally, it is unclear how the Petitioner's experience assisting in her parent's lottery ticket shop relates to her field of specialty.

Moreover, as to the Petitioner's specialty, the record is also not clear as to the specialty in which the Petitioner is attempting to establish that she possesses experience. For example, counsel's brief in support of the initial filing states that the Petitioner has "expertise in psychology and industrial organizational health training industries," but also that she possesses an advanced degree based upon her 13 years of experience in "entrepreneurship." In response to the RFE, counsel's cover letter first states that the Petitioner possesses the equivalent of an advanced degree in "business" based upon her bachelor's degree in psychology and 12 years of experience in "outpatient services and treatments for adults and children." Later, counsel states that the Petitioner's 12 years of experience is in "the field of healthcare," and later still is in "recruitment, selection, training and development, marketing, strategic planning and business plans, [and] management." Additionally, the RFE response letter claims that the Petitioner has "served in numerous roles throughout her career, including [f]ounder, [p]artner, [m]anager, [r]ecruitment and [s]election [a]ssistant, and other business-related positions."

Finally, we also note that there is a lack of clarity regarding the date the Petitioner obtained her degree. The Petitioner submitted a diploma and transcript for her title of psychologist degree from Brazil and a credential evaluation stating that the degree is equivalent to a U.S. bachelor's degree in psychology. The transcripts state that the Petitioner graduated in 2011 but that the diploma was issued in 2017. Similarly, the diploma is dated in June of 2017. The credential evaluation does not explain the discrepancy between the graduation date and the diploma issuance date. When using work experience in addition to a bachelor's degree to qualify as an advanced degree professional, the regulations require that the qualifying work experience "follow" the bachelor's degree. 8 C.F.R. § 204.5(k)(2). Therefore, the date that the Petitioner received her bachelor's degree is material to her eligibility.

[2] Evidence relating to qualifying experience shall be in the form of letters from current or former employers and shall include a specific description of the duties performed. 8 C.F.R. § 204.5(g)(1).

Based upon the inconsistencies in the Petitioner's employment history that she has not yet addressed, the lack of a specific description of duties in the employment letters, and the lack of clarity in the record as to the date of the Petitioner's degree and as to the Petitioner's claimed specialty, we conclude that the Petitioner has not established that she qualifies for the EB-2 classification.

B. Eligibility for a National Interest Waiver

We turn now to the Petitioner's request for a national interest waiver under the *Matter of Dhanasar* framework.[3] The Petitioner's proposed endeavor is to establish a mental health clinic in the state of Florida. The Petitioner states that the clinic will provide affordable outpatient services and treatments for adults and children. The Petitioner submitted a business plan which projects that by the fifth year of operations the clinic will employ 15 workers and earn approximately $400,000 annually in revenue.

As stated above, the Director found that the Petitioner established the substantial merit of the proposed endeavor but not its national importance. The Director further found that the Petitioner did not establish either the second or third prongs of the *Dhanasar* framework. As to the national importance of the proposed endeavor, the Director specifically concluded that the record did not demonstrate that providing outpatient psychological and behavioral health treatments and potentially creating 15 jobs would sufficiently extend beyond the clinic's patients and employees to impact the industry or field more broadly. The Director also noted that in determining national importance, USCIS considers the specific endeavor rather than the importance of the industry in which the petitioner will work.

On appeal, the Petitioner submits a brief, a business plan, and letters of recommendation previously provided. The Petitioner states that the business plan submitted on appeal has been updated to provide "a clearer explanation of the petitioner's goals for her company" and that "the gaps and unclear points mentioned in the denial notice have now been addressed." The Petitioner contends on appeal that she has established eligibility for a national interest waiver and that the Director's decision "raised broad and unspecific concerns" and did not "properly address the reasons for a denial." In an effort to demonstrate the national importance of the endeavor, the appeal brief primarily repeats the information stated in the Petitioner's business plan, such as statistics and information related to mental health, healthcare costs, and demand for healthcare workers in the United States, and reiterates the plan's projections for revenue and job creation.

Upon de novo review, we disagree that the Director's decision is insufficiently detailed. Rather, the Director's decision cites to specific information in the record and includes findings that are well-supported by the language of *Matter of Dhanasar*. Additionally, the Petitioner does not identify on appeal any specific legal or factual errors in these findings.

[3] Because we conclude that the Petitioner has not established that she meets the threshold requirement of eligibility for the underlying EB-2 classification, the Petitioner is not eligible a waiver of the classification's job offer requirement. *See* section 203(b)(2)(B)(i) of the Act; *see also Matter of Dhanasar*, 26 I&N Dec. at 886. Nevertheless, because the Director did not make a finding as to the Petitioner's EB-2 eligibility, the Petitioner did not have an opportunity to address this issue on appeal. Therefore, we will consider the Petitioner's claims on appeal as to the Director's decision and her eligibility for a national interest waiver.

Moreover, we agree with the Director that the Petitioner has not established the national importance of the proposed endeavor. The Petitioner's business plan helps to show that she intends to establish a mental health clinic in the state of Florida, but it does not demonstrate that this clinic stands to have a broader impact on the field of mental healthcare or on the economy at a level commensurate with national importance. Although the Petitioner asserts on appeal that the business plan has been updated, the Petitioner does not explain what about the plan has been changed and the plan appears to be nearly identical to the one previously submitted, providing the same job creation and revenue projections and the same background information about mental healthcare in the United States. The business plan still does not explain how the Petitioner's outpatient services differ from those already available on the market, offer improvements or new approaches that are replicable throughout the field, or otherwise would stand to broadly impact the mental healthcare field beyond those patients directly served. Additionally, the plan does not explain how the creation of 15 jobs over 5 years stands to have an impact on the regional economy at a level commensurate with national importance.

The Petitioner's assertions on appeal primarily repeat the assertions previously made about mental illness and mental healthcare in the United States. However, these assertions relate to the importance of the field in general, rather than to the impact of the Petitioner's specific endeavor. We agree with the Director that in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889.

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 acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs. *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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that she satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree. 8 C.F.R. § 204.5(g)(1), (k)(2). Further, the Petitioner has not met the national importance requirement of the first prong of *Matter of Dhanasar*. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.