U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28786406

Date: NOV. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner proposes to open a midwives staffing company. She seeks classification under the employment-based, second-preference (EB-2) immigrant visa category as a member of the professions holding an "advanced degree" and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer in this category - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that a waiver of these U.S.-worker protections would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the requested visa category as an advanced degree professional. *See* section 203(b)(2)(A) of the Act. But the Director concluded that she did not demonstrate the merits of a national interest waiver. On appeal, the Petitioner contends that the Director misanalysed: her proposed endeavor's "national importance;" her positioning to advance the endeavor; and a waiver's benefits to the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has not sufficiently established that her proposed endeavor has national importance. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the requested EB-2 immigrant visa category, either as advanced degree professionals or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of these U.S.-worker protections would serve the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term national interest. Thus, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements by establishing that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian native and citizen, earned a bachelor's degree in nursing from a university in her home country. Thereafter, she worked for more than 10 years as nurse and nursing instructor in Brazil.

In the United States, the Petitioner seeks to establish her own company, providing midwife and doula services to pregnant people and their newborns.[1] Over the business's first five operating years, she projects its revenues to increase from $764,400 to $2,767,000, with a corresponding increase in profits from $128,171 to $1,159,132. Over the same period, she estimates that the business's number of employees would rise from nine to 19.

B. Advanced Degree Professional

The Petitioner submitted an independent, professional evaluation equating her four-year foreign baccalaureate degree to a U.S. bachelor's degree in nursing. She also documented her post-baccalaureate employment experience in the field. We therefore agree with the Director that the Petitioner has demonstrated her qualifications for the requested immigrant visa category as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty").

C. Substantial Merit

A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The record shows that midwives and doulas can improve the health of pregnant people and their newborns, reduce healthcare costs, and help underserved

[1] Both midwives and doulas support pregnant people during their labors. Midwives, however, are licensed healthcare providers responsible for managing care and delivering babies. *See, e.g.*, UW Medicine, www.uwmedicine.org/specialties/center-for-women-and-children/midwifery-faqs.

populations. We therefore also affirm the Director's finding that the Petitioner's proposed endeavor has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Director found insufficient evidence that the Petitioner's proposal would affect the economy or the healthcare field on a national level. The Director acknowledged that her business would likely create jobs and generate tax revenues. But the Director found that she did not establish that the business's impact would have national implications or would help an economically depressed area.

On appeal, the Petitioner contends that her business would improve the health of pregnant people and their newborns and reduce healthcare costs by:

- Offering postpartum services. The Petitioner states that, in the first few weeks after births, her business would provide new parents with emotional support, breastfeeding tips, and newborn care. She states that these services would reduce parents' risks of suffering postpartum depression, promote successful breastfeeding, and decrease the need for medical interventions and hospital readmissions.
- Collaborating with local hospitals and birthing centers. The Petitioner states that providing doula services - including childbirth education classes and postpartum support - would increase awareness and acceptance of doulas among healthcare providers and parents.
- Expanding services to underserved communities. The Petitioner states her business would partner with community organizations, nonprofits, and government agencies to offer low-cost or free doula services to underserved populations. She states that these services would promote community engagement and increase trust in the healthcare system. She also notes that, about six months after she filed her petition, President Biden's administration announced a goal to increase the number of midwives and doulas in underserved communities. *See* "White House Blueprint for Addressing the Maternal Health Crisis," www.whitehouse.gov/wp-content/uploads/2022/06/Maternal-Health-Blueprint.pdf.

For the first time on appeal, the Petitioner also contends that she would establish a doula training program. She says the program would cover childbirth education, labor and delivery support, postpartum care, and breastfeeding support, and that trained doulas would help reduce the need for costly cesarean sections, pain medications, and hospitalizations.

But, because the initial petition omitted the proposed doula training program, we cannot consider it as part of the Petitioner's proposed endeavor. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request"); *see also Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998) (barring a petitioner from making material changes to her petition after its filing). Even if we could consider the doula training program, the record lacks sufficient information and evidence regarding the proposed program's size, scope, and funding.

The Petitioner further asserts that the Director erred in focusing on the revenues and jobs her business would generate. She states: "[N]o matter the number of branches or jobs or how much tax could be generated by my proposed endeavor, . . . each mother's and baby's life my company contributes . . . to spare, to save, that is national importance."

We recognize the value of midwives and doulas on the lives and health of pregnant people and their newborns, and we agree that the Petitioner's proposed endeavor has significant merit. But, to establish national importance for national interest waiver purposes, the Petitioner must demonstrate that her *particular* endeavor has national implications, such as economically or through advancements in her field. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). The projected size and scope of the Petitioner's business does not demonstrate national economic importance. Alternatively, she has not established that the business would benefit an economically depressed area. Further, the record does not demonstrate that the Petitioner's business would introduce advancements to the healthcare field.

As in *Dhanasar*, where we held that an otherwise meritorious proposal to teach university courses in STEM (Science, Technology, Engineering and Mathematics) disciplines lacked national importance, the Petitioner has not established that her venture would "more broadly" affect her field or the national economy. *Id.* at 893. She therefore has not demonstrated that her proposed endeavor has national importance.

E. The Other Denial Grounds

Our conclusion that the Petitioner has not established the claimed national importance of her proposed endeavor resolves this appeal. We therefore decline to consider and hereby reserve her appellate arguments regarding her positioning to advance her venture and a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their decisions); *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 a noncitizen did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has not demonstrated that her proposed endeavor has national importance. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.